

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

December 3, 2019

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

Member Absent: none

Others present: James Nelson, Union Vale Town Attorney

CALL TO ORDER / DETERMINATION OF QUORUM

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

BUSINESS SESSION

Chairperson Jane Smith asked for a motion to accept the November 5, 2019 regular session minutes and the November 20, 2019 special meeting minutes, motion by Board member Dennis Dunning, seconded by Board member Ilana Nilsen. All members presented voted to accept.

PUBLIC HEARING:

**Union Vale Fire District
3373 Route 82
Verbank, NY 12585**

**Meeting – 2
Three Variances**

Applicant applying for three area variances, 1) proposing a 25 square foot sign, 8 square feet allowed, requesting a 17 square foot area variance, 2) a sign made of material other than wood or etched stone and, 3) variance to have an LED illuminated sign in the Hamlet zoning district.

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

Before hearing from the applicant, Board member Dennis Dunning disclosed that his wife owns a business that has done work for the UVFD and Rescue squad in the past, but is not in any contracts with or doing any work for either at this time.

Chairperson Jane Smith started by asking the applicant if they have proof of ownership of the property where the sign is proposed to be erected; she noted that the issue of ownership was raised by the Code Enforcement officer, and that the NYSDOT appears as the owner on a survey dated 2010 that was submitted to the Town when a lot line adjustment was before the Union Vale Planning Board, and which was provided to the ZBA by the Land Use secretary.

Mr. Del Bene stated that he has spoken to the NYSDOT, and assured that they are trying to clarify the issue. Town Attorney James Nelson asked Mr. Del Bene whether, in the event that UVFD does not own the land, the UVFD would pursue obtaining a license from the NYSDOT. Mr. Del Bene agreed that it would do so.

Chairperson Jane Smith asked if the UVFD knew whether any variances were obtained in the past with relation to the current sign. Mr. Del Bene stated that he is not aware of any variances, and explained that a “moveable” sign was used in the late 1980s.

Discussion ensued between the Board members and representatives of the UVFD relating to the various factors that must be considered for each of the three requested area variances being sought. In this connection, chairperson Jane Smith advised that not only is an internally lit sign not allowed anywhere in the town under the Union Vale Town Code, but also, in the Hamlet district, there are additional restrictions on signs and conditions for their approval.

Particular concern was expressed by Board members regarding illumination and the fact that the proposed sign would have frequently changing messages. Suggestions were made that conditions could be imposed to restrict these components in order to mitigate their potentially detrimental effects, and that such conditions should be considered by the Board. Chairperson Jane Smith also advised that the Dutchess County 239 referral was sent in a timely manner, but that Dutchess County Planning had not issued its response on this application yet, and that the Board should take into consideration the County Planning input before ruling on the requested variances.

After the Board members agreed that they are not ready to vote, but appreciating that the applicant is facing time constraints for obtaining grant money for the sign, Chairperson Jane Smith made a motion to continue the public hearing to a Special Meeting on December 17, 2019 at 2:00 pm; motion seconded by Board member Ilana Nilsen; motion approved unanimously.

PUBLIC HEARING/DECISION ON PUBLIC HEARING

REGULAR SESSION / OLD BUSINESS

JAMES & ERMINIO BISCEGLIA
141 N. Clove Road
Verbank, NY 12585
TMP # 6662-00-924685

MEETING - 2
21' side yard
area variance

Applicant applying for a 21-foot side yard area variance, to legalize a pre-existing garage to obtain a certificate of compliance for an existing apartment that is in the required side yard setback of 35 feet in the R 1.5 zoning district as per Zoning Administrator’s letter dated April 3, 2019.

Chairperson Jane Smith welcomed Mr. Bisceglia and stated that an updated Zoning Administrator determination was received dated November 14, 2019, and asked that Mr. Bisceglia amend the date on his previously filed application to reflect that it was received within the 30 days of the determination. Mr. Bisceglia did so.

Chairperson Jane Smith stated that a survey was provided by the applicant which depicted the distance from the accessory structure to the lot lines.

After brief discussion between the Chairperson and Board members present, it was determined that the application complete and Chairperson Jane Smith offered the below resolution, which was seconded by Board member Dennis Dunning and passed unanimously by the Board:

“The Town of Union Vale Zoning Board of Appeals hereby acts as follows on the Application of JAMES & ERMINIO BISCEGLIA, 141 N. Clove Road, Verbank, NY 12585:

Accepts the Application for a 21 foot side yard area variance for an existing garage;

- 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, January 7, 2020 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.*

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

**Meeting - 2
Five variances**

Applicant applying for five area variances: a 640 square foot area variance of existing floor area of a Deli and Pizzeria; a 200 foot area variance for no such establishment shall be located within 200 feet of a church or other public gathering place; 9.3 foot area variance to install a canopy 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.

Chairperson Jane Smith stated that the purpose of this meeting involves the State Environmental Quality Review (SEQR) process and typing the action by the ZBA. She also advised that Dutchess County Planning had deemed the application incomplete because it was not accompanied by an updated site plan, that the updated site plan had been requested and received, and instructed the ZBA secretary to forward the plan to Dutchess County Planning if she had not already done so.

Town Attorney, James Nelson handed out a flow chart of the SEQR process to the Board members and the applicant. He then reviewed it.

Board then discussed various reasons why the ZBA is not bound by the Planning Board “Type II” action, including language in the regulations, that the ZBA had no notice of the action when the Planning Board made its determination in 2017, that when the Planning Board typed the action in 2017, the Planning Board deemed the application incomplete, that the site plan has been amended since then and has not been re-submitted to the Planning Board, and that the Planning Board’s typing resolution says “draft.”

Board member Dennis Dunning stated that the 200’ separation variance is most relevant in his eyes and that would not be a Type II action in his opinion, the other Board members agreed. Chairperson Jane Smith referred to 6 NYCRR 617.5(c)(9), the provision relied upon by the applicant as applicable to make this a Type II action, and explained why she disagreed with that argument. Under 617.5(c)(9), the “construction or expansion of a primary or accessory/appurtenant, nonresidential structure or facility involving less than 4,000 square feet of gross floor area and not involving a change in zoning or a use variance and *consistent with local land use controls*, but not radio communication or microwave transmission facilities” is a Type II SEQR action. Chairperson Smith pointed to the language “consistent with local land use requirements” and noted that this phrase must have independent meaning apart from the phrases “change in zoning” and “use variance”. In her view, “local land use requirements” under SEQR could be interpreted to mean “land use controls;” the proposed action was *not* “consistent with local land use requirements” or local land use controls because the Union Vale Town Code does not allow for gasoline stations within 200’ of public gathering places. Since Board members did not find applicable any of the other subdivisions of section 617.5(c), she moved to classify the action as an Unlisted Action; motion seconded by Board member John Hughes, and approved by unanimous vote of the Board members present.

After deferring to the Town Attorney James Nelson to explain the differences between coordinated or uncoordinated review, motion by Chairperson Jane Smith that the ZBA conduct uncoordinated review; motion seconded by Board member Dennis Dunning, and approved by unanimous vote of the Board members present.

Discussion ensued between the Board members and counsel for both the Board and applicant as to the process for determining significance under SEQR, and Board member Dennis Dunning identified several substantive environmental issues of concern in making the determination (including the release of vapors, ground water and air contamination, leaks, increased risk of fires, explosions, traffic, noise and evacuation area status). Thereafter, Mr. Caruso, counsel for the applicant, advised that applicant would not waive the 20-day requirement under SEQR for a determination of significance. Accordingly, Chairperson Jane Smith made a motion to put the determination of significance on the agenda for a Special meeting on December 17, 2019 at 11:00 am; motion seconded by Board member John Hughes; approved unanimously.

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 10:40 p.m.

The next regular meeting of the Zoning Board of Appeals is scheduled for **Tuesday, January 7, 2020 at 7:30 PM.**

The agenda will close on **December 24, 2019 at 12:00 Noon.** Items for consideration at the **January** meeting must be received by that date.

Respectfully submitted,

Joan E. Miller

ZONING BOARD OF APPEALS CLERK

annexed documents: public hearing, UV fire district, Poughkeepsie journal