

**TOWN OF STONY POINT  
Zoning Board of Appeals  
Minutes July 3, 2014**

**PRESENT:**

Mr. Anginoli  
Mr. Keegan  
Mr. Casscles  
Mr. Vasti, Acting Chairman  
Mr. Fox  
Mr. Porath (late-arrived 7:25 PM)

**ALSO PRESENT:**

Dave McCartney, Attorney  
Dan Sullivan, Attorney  
Joseph McKay, Attorney

Chairman Wright (absent)

**Acting Chairman Vasti:** Good evening. I will be Chairing for the Board. Mr. Wright is not here this evening. The first item on the agenda this evening is a decision for the request of James Coyle.

**Request of James Coyle – App. #14-04**

A variance from the requirements of the Town of Stony Point Zoning Code Chapter 215, Article V, Section 15 A d.1-7: Less than required side yard – required 10 feet, provided 3.5 feet; and Chapter 215, Article V, Section 15 A d.1-7: Less than required rear yard – required 10 feet, provided 1.0 feet, for a detached garage, located at 5 Lakeview Drive, Tomkins Cove, New York.

**Section 10.01                      Block 1                      Lot 51                      Zone RR**

**\*\*\*MOTION: Mr. Anginoli offered the following resolution; seconded by Mr. Fox.**

In the Matter of Application #14-04 of James Coyle for variances from the requirements of Chapter 215, Article V, Sections 15A d.1-7, of the Stony Point Zoning Code, to permit the construction, maintenance and use of a detached garage with less than required side yard, providing 3.5 feet, whereas 10 feet are required, and with less than required rear yard, providing 1.0 feet, whereas 10 feet are required on premises located at 5 Lakeview Drive, Tomkins Cove in the Town of Stony Point, designated on the Tax Map as Section 10.01, Block 1, Lot 51.

The premises which are the subject of this application are located at 5 Lakeview Drive, Tompkins Cove in the Town of Stony Point in an RR Zoning District.

The applicant is self represented and the following documents were placed into the record and duly considered:

Application; Building Inspector's denial letter dated 5/5/14; Survey and plans.

Additionally, members of the Zoning Board of Appeals personally visited the applicant's property and viewed it and the neighboring properties on or about June 1, 2014.

WHEREAS, the proposed action is a Type II action under the regulations promulgated pursuant to the New York State Environmental Quality Review Act; and

WHEREAS, a public hearing was held on June 5, 2014 and June 19, 2014, and the testimony of the following persons was duly considered: applicant.

WHEREAS, all the evidence and testimony was carefully considered and the Zoning Board of Appeals has made the following findings of fact:

The applicant is the owner of the subject parcel which contains a two story single family home. The applicant recently applied for and received an area variance in connection with the construction of a front porch and a rear deck. The applicant engaged the services of an architect in regard to his garage, and it was determined that the current location of the garage was not feasible because a beam was too low. It was determined that the only feasible alternative was the construction of a detached garage with a carport to the side and rear of the property. Architecturally and aesthetically, in order to match the detached garage with the existing driveway and the configuration of the house, it is necessary to place the garage in a location that brings it within the prohibited side yard and rear yard setbacks. In regard to the side yard, it comes within 3.5 feet of the property boundary, whereas 10 feet are required, and in regard to the rear yard, it comes within 1 foot of the boundary, whereas 10 feet are required. The terrain owned by the adjoining property owner immediately adjacent to the corner of the lot where the garage is proposed is steep and not in use. The neighboring property owner received notice of the application and voiced no objections. The applicant reports that the neighbor supported the application so long as the garage was located in the corner where it is currently proposed on this application.

WHEREAS, this Board has examined the written documentation and reviewed the testimony with respect to the applicant's request for a variance, and, pursuant to the requirements of section 267-b.3 of the Town Law, hereby finds that the benefit to the applicant if the variance is granted outweighs any detriment to the health, safety and welfare of the neighborhood or community by such a grant, and has made the following findings and conclusions in that regard:

(1) "whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance":

There is no evidence presented that the proposed variances would produce any undesirable change in the character of the neighborhood or a detriment to any nearby properties.

(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":

There is no evidence presented to this Board that the benefits sought could be achieved through any other means which were feasible for the applicant to pursue.

(3) "whether the requested area variance is substantial":

The variance sought is substantial.

(4) "whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district":

There is no evidence before this Board of any adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

(5) "whether the alleged difficulty was self-created":

The alleged difficulty was self-created but is mitigated by the absence of feasible alternatives for the maintenance and use of a garage at the subject location.

NOW, THEREFORE, BE IT RESOLVED, that the application for a variance as set forth above is hereby approved on the condition that the applicant shall be confined to construct the garage and carport in the location and configuration as indicated on the plans submitted to this Board, and the matter is remanded to the Building Inspector for all further necessary proceedings and reviews consistent with this resolution and all other applicable laws, rules and regulations.

**Upon roll call, the vote was follows: Mr. Anginoli, yes; Mr. Keegan, yes; Mr. Casscles, yes; Mr. Fox, yes; Mr. Porath, absent; Chairman Wright, absent; and Acting Chairman Vasti, yes.**

**Acting Chairman Vasti:** The next item on the agenda is the Public Hearing for the request of Matt Anderson.

**Request of Matt Anderson – App. #14-06**

A variance from the requirements of the Town of Stony Point Zoning Code Chapter 215, Article V, Section 15Ah.4-4: Less than required front yard/setback - required 25 feet, provided 14 feet; and Chapter 215, Article V, Section 15Ah.4-6: Less than required rear setback – required 25 feet, provided 20 feet, for a 2-family residence, located at 16 River Road, Stony Point, New York.

**Section 21.09                      Block 1                      Lot 18                      Zone RW**

**Acting Chairman Vasti:** Is anyone here representing the applicant?

**John Perkins – Architect**

**Acting Chairman Vasti:** Mr. Perkins, “Is the testimony you are about to give, truthful?”

**Mr. Perkins:** Yes. I am going to display the project. Good evening ladies and gentlemen. This is a new house being reconstructed now at River Road (inaudible – away from microphone).

**Ms. Kivlehan:** John, can you please step back in front of the microphone so I can get everything you are saying.

**Mr. Perkins:** It is a new two-story dwelling constructed on posted “V foundation” with the ability to park the vehicles underneath. Last time I was here there was some discussion of what the car parking abilities would be on the premises. I was a bit unclear as what the plans would be for the owner just because I didn’t want to speak out of turn, but they have agreed to utilize the space for underneath the actual house itself. The principle dwelling could accommodate easily four (4) cars; parked front to back on either side of the house.

The house itself...what we are requesting is the front yard for a variance for purposes of stairs and front porch. The distance to the front porch itself is 20 feet and the stairs extend forward so that we can actually accommodate the ability to get underneath the principle dwelling for vehicles. So it is necessary to kind of extend outward with the stairs and they extend slightly to the left and to the right; just to give you a little bit better of a nicer esthetic. That is pretty much it. I have the actual diagram itself here. I will refer to it. Again, River Road, the principle dwelling place in conformance left and right, the front is really what’s not in conformance. You have 20 foot to the actual porch. The porch is going to be at the front portion of the house (pointing at map) actually 6 feet from the house and then the stairs will extend outward. (Walked away from microphone – inaudible.)

**Acting Chairman Vasti:** Members of the Board, any questions for the architect?

**Mr. Casscles:** We went down there for a site visit on Sunday, George was there and he had mentioned that you are just going to lose the outside...half of each dwelling is the parking area; not the whole thing because he said you are going to re-do the stair lay-out.

**Mr. Perkins:** The stair, I believe, is going to remain (inaudible – stepped away from microphone)

**Mr. Casscles:** He said you are going to pull it back instead of going down the outside it will going to pull back towards that house.

**Mr. Perkins:** Towards the rear of the house.

**Mr. Casscles:** Instead of looking like a “T” on the stairs, you are going to bring back underneath?

**Mr. Perkins:** Back underneath – you will double back.

**Mr. Casscles:** If that’s the case, we will need to get the modified plan?

**Mr. Perkins:** As far as I know, that’s usually (inaudible – stepped away from microphone.)

**Mr. Casscles:** You still going to be able to accommodate another landing there...if you go the other way?

**Mr. Perkins:** Yes. This is a 3 foot landing; you just have to continue backwards. Worst case scenario (inaudible – stepped away from microphone)

**Mr. Keegan:** If that is taken back, how does that affect the parking underneath the structure?

**Mr. Perkins:** It actually improved the clearance. It will encroach from the stairs. The stairs won’t extend to the left (inaudible)

**Mr. Keegan:** Just one (1) staircase coming down?

**Mr. Perkins:** I believe, (inaudible)

**Mr. Keegan:** In the absence of an Enforcement Officer, how is this Board going to feel comfortable that even in view of the variance that the cars will be parked under the building and because the way it was explained to us on Sunday, the cars would park under the building one behind the other. That seems to be...just from a practical point of view that seems to be rather inconvenient. It is easy just to leave one of the cars outside.

**Mr. Perkins:** We can make provisions for the parking under the structure. (inaudible)

**Mr. Keegan:** But, this is parked out in front of the house. That’s a “No Parking”...

**Mr. Perkins:** What I am saying is the actual...the parking is under the structure. It is pretty hard (inaudible)

**Mr. Keegan:** Yes, I understand that. My question is that’s rather inconvenient. That rather bulky and then the tendency of anybody would be to put one (1) car underneath it and leave the other car outside.

**Mr. Perkins:** You can. I don’t think they would use it that way, but (inaudible). It would be beneficial to park them (inaudible).

**Mr. Keegan:** Okay, you just don’t understand the question or...

**Mr. Perkins:** Apparently not.

**Mr. Keegan:** Okay, I could park a car off to the side, but in the front yard.

**(Mr. Perkins pointing at map.)**

**Mr. Keegan:** Yes, over there and still give myself plenty of room to get in the car?

**Mr. Perkins:** (inaudible)

**Acting Chairman Vasti:** That's something the owner of the property is going to have to deal with. As far as what's before us, that's really not the focus as much as...it could be a foreseeable problem, but then again that's in question.

**Mr. Keegan:** Clearly that would be part of the variance, if there is no parking in that area.

**Acting Chairman Vasti:** Anyone else on the Board have any questions?

**Mr. McCartney:** I just have a quick observation – was I understanding right, that the plan may be revised so that the parking, rather than coming down in a “T” it would turn around and come back...

**Acting Chairman Vasti:** The premises staircase.

**Mr. McCartney:** It would appear to me, just looking at the configuration that that would reduce the variance sought. Am I correct on that? In other words this 14 feet to here and it would no longer be...

**Mr. Perkins:** Very slightly.

**Mr. McCartney:** By about a foot or 2?

**Mr. Perkins:** I would say considerably. It could reduce the amount of distance from the front yard.

**Mr. Casscles:** That's why I bought it up. If it does, we have to know that.

**Acting Chairman Vasti:** If infact that is the case, and Counselor raised a valid point, and I would request at this time that we get an amended plan and it be submitted to the Town so that it could be entered into the records to reflect what is actually going to happen there with the staircase.

Any other member of the Board have a question?

**Mr. Fox:** Mr. Perkins, the elevation of the front porch...what is the elevation of that from the ground up?

**Mr. Perkins:** (inaudible)

**Mr. Fox:** That's why it is used in two (2) levels.

**Mr. Perkins:** The staircase, itself, can't extend (inaudible)

**Mr. Fox:** (inaudible) Thank you.

**Acting Chairman Vasti:** I have one question. How many steps is that staircase from top to bottom until you reach grade level?

**Mr. Perkins:** 16 steps; I believe.

**Acting Chairman Vasti:** So I am assuming it's going to be up to Code with railings and so forth?

**Mr. Perkins:** Yes.

**Acting Chairman Vasti**: If there are no other questions from members of the Board at this time, we can open up the application to the public. Does anyone here have any questions? If you do, please come up, state your name and address and one person at a time. Come up to the microphone please.

**William Brosnan**  
**14 River Road**  
**Stony Point, New York**

**Mr. Brosnan**: When you are looking at the house, we are to the left.

**Acting Chairman Vasti**: Please raise your right hand – “The testimony you are about to give is truthful?”

**Mr. Brosnan**: Yes. We just have one question. We look at it and most of the people who live down there were down there for one reason for the view on the river and this house is... (showing a photo) this is what was here before. The house...this was the house that is being replaced and there is three (3) houses in a row there. With this one...

**Acting Chairman Vasti**: May we retain this photograph?

**Mr. Brosnan**: Yes.

**Mr. McCartney**: Let the record reflect that Mr. Brosnan is handed up a single photograph to remain part of the record.

**Acting Chairman Vasti**: Please go ahead, sir.

**Mr. Brosnan**: There are three (3) houses that are in a row and we looked at the variance. We were just made aware of this beforehand. This house coming out now will be twice the size. We have no objections with that. But, it's going to come out with the variance where we look down to the see the river on the left. You'll just see a three-story structure and it could go back to be level with the other two (2) houses. To be aligned with the other house, their house on the other side to ours and they would still have the room in the back which they wouldn't interfere with anybody's view. And even since they had Sandy, the first thing they said is don't move the houses closer to the river. Move them back. And so there is really no point for it to come out that far. If it's aligned with us, we have no objections. They could put it up six (6) stories high and I don't care.

**Acting Chairman Vasti**: Thank you sir. Anyone else in the public...

**Mary Ellen Brosnan**  
**14 River Road**  
**Stony Point, New York**

**Acting Chairman Vasti**: Please raise your right hand – “The testimony you are about to give is truthful?”

**Mrs. Brosnan**: Yes. It is a little bit more in detail to what my husband just said, but when the variance for the back of the property, which abuts on property owned by Stony Point, which will never be built on, the variance is only 5 feet; whereas the variance in the front is 11. I don't see...my suggestion would be to move it back so that there's a little more of a variance in the back which wouldn't interfere with anybody and give a little more room in the front.

The other thing I thought of is we asked to be able to drive into our house from the road and we were refused. We go around to the side and park in the back. I think getting out onto the road, which is busier since we've moved there, the more room you have in the front to get out and to get a clear view is a help also.

That's all I have to say.

**Acting Chairman Vasti**: Thank you very much. Anyone else in the public would like to make any comments or have any questions?

**(no response)**

**Acting Chairman Vasti**: At this time, I will entertain a motion to close the Public Hearing.

**Mr. MacCartney**: My only advice would be since the Board is requesting a revision to plans and that that revision be submitted since there's been a change in the configuration of the stairway, my advice would be to ask that the Public Hearing be held open so that the public would be given the opportunity to comment on any revised plans that are submitted.

**Acting Chairman Vasti**: I think that is a valid point, Counselor. We will then keep the Public Hearing open and...

**Mr. MacCartney**: It should be a motion to that effect.

**\*\*\*MOTION: Mr. Casscles made a motion to keep the Public Hearing open; seconded by Mr. Keegan. Hearing all in favor; the motion was carried.**

**Acting Chairman Vasti**: We will keep the Public Hearing open. You've heard some of the comments from the Public tonight and if you would bring those back to Mr. Celantano and also that revision with the staircase for the next meeting.

Okay, Kathy and the next meeting; the date of that will be...

**Ms. Kivlehan**: July 17<sup>th</sup>.

**Acting Chairman Vasti**: July 17<sup>th</sup> will be our next meeting.

**Mr. Perkins**: Thank you.

**Acting Chairman Vasti:** The next item on the agenda is the Public Hearing for the request of Peter and Judy Cairo.

**Request of Peter and Judy Cairo – App. #14-07**

A variance from the requirements of the Town of Stony Point Zoning Code Chapter 215, Article V, Section 15Ah.1-6: Less than required rear setback, required 25 feet, provided 23 feet, for replacing and enlarging existing deck and landing, at 5 Cartwright Road, Stony Point, New York.

**Section 20.05                      Block 2                      Lot 3                      Zone R1**

**Acting Chairman Vasti:** Anyone here for the application? Please come up and state your name and address, please.

**Judy Cairo  
5 Cartwright Road  
Stony Point, New York**

**Peter Cairo  
5 Cartwright Road  
Stony Point, New York**

**Acting Chairman Vasti:** Raise your right hand – “The testimony you are about to give is truthful?”

**Judy and Peter Cairo:** Yes.

**Acting Chairman Vasti:** Please go ahead Mr. Cairo or one...one at a time.

**Mr. Cairo:** Well we are just requesting the other section of 2 feet on our deck. Basically, it makes it a little bit more comfortable on top. It is only 10 feet now and with the barbecue and other things up there it’s just gets a little cumbersome to walk by. So we just want to add 2 feet to the deck.

**Acting Chairman Vasti:** Any members of the Board, any questions?

**(no response)**

**Acting Chairman Vasti:** We were out there for a site visit I believe...okay thank you.

Anyone in the public have any questions about this application?

**(no response)**

**Acting Chairman Vasti:** No one in the public.

Alright we do have a letter that we received from a Mr. Roy Kinkead. A copy of which was given to each Board member.

To whom it may concern:

6-24-2014

I Roy Kinkaid residing @ 7 Cartwright Rd  
Stony Point, NY, have no objection against  
my neighbors in # 5 Cartwright Rd, for  
getting a variance to extend their deck  
deck.



**Acting Chairman Vasti:** This letter is part of the record. With that I will entertain a motion to close the Public Hearing.

**\*\*\*MOTION:** Mr. Casscles made a motion to close the Public Hearing; seconded by Mr. Fox. Hearing all in favor; the motion was carried.

**Acting Chairman Vasti:** Next item on the agenda is a discussion for the request of BHS Associates, Inc.

**Request of BHS Associates, LLC – App. #14-05**

A variance from the requirements of the Town of Stony Point Zoning Code Chapter 215, Article IV, Section 12-f – Use not permitted in LI zone, for a research/school, located at 15 Holt Drive, Stony Point, New York.

**Section 20.04                      Block 11                      Lot 6                      Zone LI**

**Acting Chairman Vasti:** I thought we were going to drop that “research” off.

**Ms. Kivlehan:** Okay, I will amend the next agenda.

**Acting Chairman Vasti:** So we should amend this to reflect that it is not a research; it is just a school and with that we will open this up to a discussion.

**Mr. MacCartney:** Gentlemen, just let the record reflect, as in the prior date that this matter has gone before the Board, and I am recusing myself in this application.

**Acting Chairman Vasti:** Mr. McKay, welcome back. Dan, how are you? What is your pleasure?

**Mr. McKay:** It is our understanding that the Board was going to start its deliberations this evening concerning the underlying application.

**Acting Chairman Vasti:** Okay, members of the Board...anyone have anything to say on the Board about this application? Any questions? We have Mr. Emanuel here. If there are any questions...we also have Mr. Helmer in the audience if there is any questions.

**Mr. Porath:** Is it appropriate to direct questions to the applicant or is this simply a Board discussion?

**Acting Chairman Vasti:** I believe the Public Hearing is closed, but we can discuss this application.

**Mr. McKay:** I don't think the applicant will be against providing any helpful information to make the decision.

**Mr. Porath:** One of the concerns that I know I've heard and has been raised by people, either here tonight or not here tonight, is that if this school would impact future development, particularly possible development at the bottom of Holt Drive, to be very specific, there's been discussion and quite a push to develop a gasification facility. There are a number of problems with that. It is something that is a longer range plan, but I have heard people that have approached me and said that their concern was, of course, that if we start to migrate farther from an industrial corridor to a, be it a retail, a school or other commercial use of the facility farther up, that in fact those tenants, or those people that have developed that further up would then turn around and perhaps get a variance, but then turn around and start to oppose more industrial uses at the bottom of their facility.

So, I guess my question is more of is there...what would be the response of the applicant to that if there was a question, and I know we are kind of bound by the rules here that it's just not an open public hearing, but I would like to hear how that issue would be addressed; and to be very specific, if there was intense industrial development at the bottom of Holt Drive, either gasification plant or some other use that the Town saw fit for that facility, how would this school or the applicant be willing to alleviate fears that they would later oppose it because they would say there is a school here.

**Acting Chairman Vasti:** I have an item that I would like to bring forward and discuss. The request of a use variance is a very substantial application. It has a very discreet set of criteria – four (4) items that have to be met and all the items need to be met for the variance to be approved and one of the items that I felt in the discussions was with regard to the “financial difficulty”. We heard testimony from Mr. Emanuel and the from the applicant about the hardship that the applicant is faced in recent years; being unable to rent out the property to another tenant that would bring in a substantial income and then we found out that the existing tenants, Stony Point Electronics, is still in the premises. We are not sure exactly what the arrangement is; financially with the existing tenant, but based on that premise and based upon the fact that the applicant did go ahead and retain a real estate broker and try to sell the property, but was unable and now is entertaining the possibility of putting a school in there...given that set of testimony, let's say for example that a school was granted a variance to

occupy the premises, the applicant admitted that numerous and substantial modifications to the property would have to be made. We have no knowledge in dollar terms what those modifications to the property would be in cost. We have no concept before us whatsoever how those financial terms would be brokered, what a mortgage would be, how many years that mortgage would take for the applicant to see a profit on the property and, in fact within that period of time if the tenant would have an unsuccessful experience in that building and no longer desire to be there rendering the owner of the property again in a position of a vacant parcel of land that has been substantially modified for a specific use of a school and I think that would be a very much reminiscent return to what the property is now in its present form, a building that was specifically erected for the purpose of an electronics company with certain sizes, heights of ceilings, loading docks and so forth.

So I think that argument is very weak in terms of its ability to provide a good argument for a financial hardship. I don't see that as a valid scenario. I am speaking just for myself.

**Mr. McKay:** I would like to just make a comment, Chairman Vasti. Just to remind the Board the standard test to apply in determining whether or not it's going to be a use variance, is the applicant generally has to meet four (4) criteria. You touched on a few of them. They are somewhat discreet and the applicant needs to meet all four (4) of the criteria. The first is that the property is incapable of earning a reasonable return on initial investment if used for any of the allowable uses in the district. So it's not just the use that the applicant is requesting it's whatever other use would also be permitted. So if there are four (4) different types of use that are available in that district the applicant would have to demonstrate that they were incapable of earning a reasonable return for any of those uses. Secondly, that the property is effected by a unique or highly uncommon circumstance. The third is that if the grant variance were granted it would not alter the essential character of the neighborhood and fourth, and I think this is something that you were touching on as well, is that the hardship is not self-created. I think that goes, at least it prompts a discussion of the initial construction of the building for a particular purpose and that should guide the Board and maybe prompt some discussion on that issue and some discussion, I think as you were making a point as well, as to whether or not the Board had received sufficient financial information to determine that the applicant was incapable of earning a reasonable return on their initial investment.

**Acting Chairman Vasti:** Members of the Board, anyone else want to discuss anything about the application?

**Mr. Porath:** Well I think we should address that specific issue. I would imagine, if you were talking about a home, if I bought a home for "x number of dollars", and the market value was "x number of dollars", it's easily determined, in my experience with financial hardship you want to sell it or whatever...in the business, I would suspect that it is much more subjective. I don't know where the goal line is to determine that that facility, what is a reasonable return on a commercial property. I suppose if you want to lower the bars for what you want to lease it low enough; somebody would take it, you would practically give it away, but where is the bar considered. What's a good financial return? Is he entitled to break-even, make a 10% profit, a 20% profit? I do know one benchmark I am considering is the fact that that property has seen little commercial development. I understand Stony Point Electronics is in there and I don't know the exact terms of that, but the applicant has said that that isn't really a money-maker for him. I think that's all we know at this point. We don't know to what degree.

I say we should really question how we are determining whether it is a return for the applicant.

**Acting Chairman Vasti:** Anyone else?

**Mr. Keegan:** Mr. McKay, by initial investment are we talking about what the applicant paid for the property initially and...

**Mr. McKay:** Well that's the language from the statute, yes.

**Mr. Keegan**: For inflation; that's not taken into account?

**Mr. McKay**: Well the best..I'll read it again because that's what we have to go on.

**Mr. Keegan**: Fine.

**Mr. McKay**: "That the property is incapable of earning a reasonable return on an initial investment if used for any of the allowed uses in the district." In a sense its dollars and cents type proof.

**Mr. Sullivan**: Your Code states, "The applicant cannot realize a reasonable return provided that lack of return is substantial and demonstrated by competent financials." That is your Town Code which altered the State; so that question that you have is out of your Code that if the initial investment words are taken out.

**Mr. Keegan**: So then my question becomes – normally a Town can make a State Code more severe; more taxing, but not less taxing.

**Mr. McKay**: Not necessarily. You can't go beyond what the State statute would allow you, you can...

**Mr. Keegan**: You can do less then what the State said?

**Mr. McKay**: It depends on the specific circumstance, but you can't adopt a statute which would be more onerous to the applicant than the State Law would allow.

**Mr. Keegan**: You also bought up; I think it was the third criteria...what was the third criteria that you bought up?

**Mr. Sullivan**: The third one is...I will quote your Town Law – "that the requested use variance, if granted, will not alter the essential character of the neighborhood."

**Mr. Keegan**: What was the fourth?

**Mr. Sullivan**: The fourth one is that "the alleged hardship has not been self-created".

**Mr. Keegan**: Okay, thank you.

**Acting Chairman Vasti**: I also wanted to just say something in terms of the initial statement that was made about the future impact on other industrial applications...I'm sorry other applications, in the area of an industrial nature. With regards to concerns about the gasification plant – we really don't have any guarantee that...people live in Haverstraw, for example the Haverstraw Elementary or West Haverstraw Elementary School that borders the property, people could...people couldn't have a right to protest any industry that is near a school or another entity or owner of a parcel of property adjacent to a zoned parcel of land that is zoned "LI". We really don't have a crystal ball to predict the future and I think our judgment shouldn't be narrowed by that possibility of a future industry coming in there because protest could come from anyone in the community at any time with any application. I remember when we were looking at the application for the Shop Rite. There were a lot of concerns from neighbors. There were concerns with the signage, the lights, the hours of the operation, the traffic. These are realities when dealing with changes in developing a parcel of land. We need to keep an open-mind with regard to that.

**Mr. Porath:** If I could just...I couldn't agree more. So if I am unclear about my earlier comments I could not agree more with your thoughts about that. My thinking was, and maybe this is an off-shoot of my, what I do for a living as far as economic development, that all too often, and not specific to the Town or this specific incident, an element of strategic thinking doesn't...it should be part of the play and I'm just thinking in terms of that if there was future development and one of the issues that is causing some concern out there in the public would be that this school would then turn around and somehow oppose future development perhaps, and I'm just throwing this to the Board, perhaps that one mere issue could be mitigated by having the school, as far as a condition of approval, if that was to come to pass, that the school would agree not to oppose future industrial type development. But, they want to be very open-minded and say we know where we are going and we know the nature of this area. We are not going to now try and impose the fact that we are here and got this variance for future development. That was all. I don't think that actually falls within the four (4) criteria we need to make the decision tonight. I'm just thinking a little outside the box for the future; that is all. I don't think this issue should hinge on that.

**Acting Chairman Vasti:** Anyone else on the Board?

**Mr. Fox:** In the testimony they make mention of I think Joe you bought this up about the monies that they would need to spend to update the building for a school. Just thinking on the other side, what would it take to retro-fit the building to attract commercial businesses in that area? What type of monies are they spending to do that and would it be appropriate to maybe raise the roof on that building which was made mention of not being able to attract commercial businesses because it was limited in height. Just a thought I have in reference to that.

**Acting Chairman Vasti:** And toward that comments by Mr. Fox, also we have no concept of how the property was marketed, advertised, how often and exactly how it was framed in those advertisements or marketed for the purposes of renting it out to an industrial tenant. Certainly that would have been helpful. Also, that the property in its existing form has quite a bit of property that you don't really realize when you first go down there because of all the vegetative growth and storage of other types of equipment that are on the property which really impede the appearance, the curbside appeal of the property to may be a prospective tenant. There is also no "for sale" sign on the property or "for rent" sign on the property when we arrived for the site visit and as far as I can recall driving down the road, because I do shop at Shop Rite, I've never seen a sign erected that said "property available" or "build to suit", so on and so forth which is very typical in our economy along many avenues of properties that are of commercial, and even residential nature. So it's really kind of a hidden or a "coptic" type of situation there where from the appearance of it and from what we could observe going by it that there really wasn't too much of a large effort to try to rent it or sell it; from what you could see from a visible sign because there was none existing.

**Mr. Emanuel:** Mr. Vasti may I address that please?

**Acting Chairman Vasti:** Counselor, can Mr. Emanuel address that?

**Mr. Emanuel:** I don't wish to add any additional information.

**Mr. McKay:** The Public Hearing is closed. To the extent that it is a clarification that is fine, but if it is anything of a substantiate nature the record is closed.

**Acting Chairman Vasti:** Okay, if it is a clarification Mr. Emanuel...

**Mr. Emanuel:** It is a clarification. I don't mean to interrupt at all, but your recollection Mr. Vasti is just absolutely not correct. Mark Glasel, who is a licensed real estate broker/commercial broker and; Mr. Fox, who is shaking his head because he is recollecting it now, was here and he testified as to the marketing efforts that were put forth to attract another user. Hearing your conversation about the possibility of raising the roof, that was a direct result of Mr. Glasel testimony. Mr. Glasel was the one who testified to this Board that the reason why the property was unattractive to other warehouse users was because the roof and the ceiling height was too low. He did tell his attempts over the years to try to market the property. The mere fact that there wasn't a "for sale" sign or a "for rent" sign doesn't mean that it wasn't marketed. You have testimony; it was given to you by the person who was in charge of doing that marketing. So to say that it wasn't marketed is just actually incorrect.

**Acting Chairman Vasti:** Thank you Mr. Emanuel. What I am saying is not that it wasn't marketed, what I will say and clarify was, I never saw a "for sale" sign or "will build to suit" sign on the property in the years that I've going down there. I understand it was in the hands of a realtor. I did hear the realtor's discussion when he was here. I am not denying that, but to what degree, to what extent. We have no logs, we have no records, we have no ads that were placed in paper that were given to the Board, or myself, to look at. We only have a testimony and that is fine; and based on that testimony is what I am responding to.

Any other members of the Board have anything they would like to discuss with our Counselor or among ourselves?

**(no response)**

**Acting Chairman Vasti:** No other discussion...

**Mr. Porath:** I think this is valuable to the discussion because I think we are talking about an issue, quite frankly I think we are talking about an issue bigger then, ironically bigger then this school.

I am going to say squarely this is my opinion. It doesn't represent my employer, or the position of the County. This is purely my position – that Holt Drive corridor at one time was an industrial site. It stopped, in my opinion; stopped being an industrial site the day Shop Rite was located there with retail stores. Then it became a mix of various types of uses. The nature of that corridor has changed, mostly for reasons that have nothing to do with Stony Point. The Route 9W corridor has become a major retail corridor. There's a million lights. I've talked to any number of businesses that have considered coming up there, and all voice the same issue – 9W is the only access. You can't get there with tractor trailers in any reliable way with any timely fashion and what we've been seeing is an industrial corridor, that Holt Drive, languishing over the course of a number of years now and not just ironically the one who has been least vocal about it has been, I think is Mr. Helmer. There's another major developer down there that I've been working with for years trying to find tenants for his empty buildings and it's the same issue.

I can't speak for the rest of the Board, but I am very, very comfortable in believing that if the Town proceeds with a purely industrial use for that corridor it will remain empty. I personally believe it should be a mix of commercial, if not retail uses at least from the Shop Rite portion or thereabouts up. Now there are some users there...Time Square Lighting, and Lighting Services I don't think they have any intention of going anywhere, but I think the nature of that corridor is changing or needs to change if we want to see economic development come there. What happens at the bottom, again, as we just said earlier as far as maybe considerations.

I see the school as; it's not even about the school, I see the school as if the Board, if we decide that this is something good for the Town, as a business coming into the Town because at the end of the day that's what it is. It's a business coming into the Town with jobs and increasing spending and all the economic benefits of that. So I think that's something we have to consider, but I don't think we should be overly side-tracked debating the merits of whether that property is marketable as an industrial site or not. I think that "horse is out of the barn" in my opinion.

**Acting Chairman Vasti:** I wanted to make a comment about the concerns about traffic on the road. Personally, I don't feel that there would be any impact at all with the traffic. I feel that there is enough from what was provided from the sketch that we reviewed and looking at the property that the vehicles can make a safe entry and exit in and out of that property with really no hindrance to the other traffic on Holt Drive. I think it has a wide enough entrance, it has enough space to "q-up" school buses and small vehicles transporting children and it would basically be early hours of the morning and mid-afternoon hours and it would have a minimal impact on a hindrance, if any, to the traffic pattern in the area.

I thought that was well thought out. There's a turn-around. We are not going to have vehicles backing up and ingress and egress seems very flowable.

Anyone else?

**(no response)**

**Acting Chairman Vasti:** If there's no other comments or discussion from the Board, then I would now ask our Counselors what the next phase of the process would be and if our Counselor wants to add anything?

**Mr. McKay:** Well the Board has closed the Public Hearing. It seems like its deliberations are at an end. What the Board can do is wait to get a transcript of tonight's deliberations for your consideration. The Board can direct us to prepare a draft/decision based on the comments to provide to you for your review and an ultimate determination.

I have a question about the timing. The Board will be meeting on the 17<sup>th</sup>, I believe, so how fast would we be able to get the transcript?

**Ms. Kivlehan:** I can probably have it out by the end of the week coming up.

**Mr. McKay:** That would be the week before the meeting?

**Ms. Kivlehan:** The 17<sup>th</sup>. I can probably have it done by the 11<sup>th</sup>.

**Mr. McKay:** What's the next meeting after the 17<sup>th</sup>?

**Ms. Kivlehan:** September.

**Mr. McKay:** Oh. It is going to be tight. The Board, may be to give Counsel a little guidance, we could hear maybe some dividing opinions. It's not really clear, at least to me, I don't know – Dan chime in, it's not clear to me that I see the Board leaning one way or another on this so we can look at the minutes and prepare something, but we are a little further away from some kind of final decision unless we get some clarification from the Board.

This is our way of saying I don't know what I would put in the decision for the 17<sup>th</sup> yet.

**Mr. Porath:** If I can interrupt – I don't know if any of us have a sense of where everyone here is because I don't think most people have voiced an opinion one way or the another. Would it be appropriate for everyone to give their opinion at this point; so there is some guidance?

**Acting Chairman Vasti:** If members of the Board are prepared to give their opinion or give some indication of how they feel on the application, would that be appropriate Counselor?

**Mr. McKay:** Sure there is nothing wrong with that given the fact that this is not a vote. It's just for deliberation.

**Acting Chairman Vasti:** There are six (6) of us here this evening; which...

**Mr. McKay:** We also have a concern because at the last meeting the Board closed the Public Hearing so we are looking at a 62 day time frame.

**Acting Chairman Vasti:** Again, I don't want the Board to feel pressured at this time. The Board has a right, I believe, to review the minutes also. If you want to give us some guidance...

**Mr. McKay:** Well maybe we can do some math. When did we close the Public Hearing?

**Ms. Kivlehan:** We closed the Public Hearing on July...June 19<sup>th</sup>.

**Acting Chairman Vasti:** I believe we have, what, 60 days.

**Mr. Keegan:** 62.

**(inaudible – numerous people talking at once)**

**Mr. McKay:** When is the Board's next meeting, Kathy?

**Ms. Kivlehan:** July 17<sup>th</sup>. September 4<sup>th</sup> is the next one after that.

**Mr. Emanuel:** We will grant the Board extra time to make a decision.

**Acting Chairman Vasti:** Thank you Mr. Emanuel.

**Mr. Emanuel:** Don't thank me; thank him (pointing to Mr. Helmer).

**Acting Chairman Vasti:** Thank you Mr. Helmer. How would the Board feel about giving a...since it's not a decision, but getting their opinion either for or against at this time just to give some indication...

**Mr. McKay:** Even if the Board doesn't want...if a member doesn't want to say "for" or "against", but if you have something specific can clue us in a little bit, that would be helpful.

**Mr. Porath:** It is appropriate to say "no opinion", right?

**Mr. McKay:** You're not voting...

**Acting Chairman Vasti:** If you are not at that point...that's fine.

**Mr. Fox:** #2 is the "highly uncommon circumstances"; I am held up on it. I am definitely held up on it; having "uncommon circumstances" for that piece of property.

**Mr. Keegan:** Where did that come from? I'm sorry.

**Mr. Fox:** That's #2 in the criteria.

**Mr. Keegan:** The criteria?

**Mr. Sullivan:** I could read it again...that's the second one. "The alleged hardship relating to the property (this is from your Town Code)...that the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood."

**Acting Chairman Vasti:** One of the questions I'd like to ask our Counsel is...is it possible to grant this variance with certain conditions; like a contingencies?

**Mr. McKay:** You can. It is my understanding, and I haven't seen it, my understanding is that we received something from the County. Although it's...

**Ms. Kivlehan:** I have it right here and did send it to you.

**Mr. McKay:** The County is actually...I didn't read the whole thing. My understanding is the County recommended conditions (inaudible).

**Mr. Sullivan:** What happened was Mr. Emanuel stated that these questions that the County rose were as far as the site plan approval and...he went to the County and mentioned that to them and they recommended that the use variance, if granted, have conditions on it and it was the play area and parking concerns. The letter today, I read it in my office, it was basically it wanted the use variance to be...have these conditions in it and that if they didn't meet the conditions and site plan approval that the use variance would be rescinded.

**(too many people talking – inaudible)**

**Acting Chairman Vasti:** My opinion I think there is a possibility that we could live with this application in our Town. That it would develop a piece of property that is "light industry" for a number of years. It would bring industry. It would fulfill a need that is desperately needed for children with special needs and I think there is a possibility that it could work out. I believe that the Planning Board would be deeply involved with this and knowing how the Stony Point Planning Board holds to making sure that everything is correct with a site plan approval I think they do an excellent job in making sure that this is a safe enviable entity in the Town. So I think it does have a possibility in our Town.

**Mr. Porath:** I will offer my opinion – In the absence of any concrete issue that really makes it not appropriate there, that I've heard, I'm inclined to support the application. I think we need business, we need development. I think the nature of that area is changing and needs to change if we want to see development. I think the various four (4) criteria, quite frankly, lend themselves to quite a degree of subjective interpretation; perhaps, backed up with facts and figures, but I think you can make an argument if you are inclined to go...support each of those. You can "yes" on them and if you are inclined to say "no" you can find reasons to say "no" on them.

So with that said, I'm inclined to say that they meet the criteria and I would be supporting this.

**Acting Chairman Vasti:** Anyone else?

**(no response)**

**Acting Chairman Vasti:** Can we close the discussion for today? I will entertain a motion to close the discussion

**\*\*\*MOTION:** Mr. Keegan made a motion to close the discussion for tonight on Application #14-05 – The Request of BHS Associates, LLC; seconded by Acting Chairman Vasti. Hearing all in favor; the motion was carried.

**Mr. Keegan:** We can always re-open again; right or is that...

**Acting Chairman Vasti:** Well I believe at this point, I closed the discussion for tonight. Of course, we can...we have until September to make a decision so we are going to talk about it again on the 17<sup>th</sup>. We will have the minutes and we will talk about it again on the July 17<sup>th</sup>.

**Ms. Kivlehan:** So you want me to keep it on the calendar for a discussion?

**Acting Chairman Vasti:** Yes, absolutely.

**Mr. McKay:** Then what we will do, my office will do a follow-up memorandum to clarify some of the legal issues that were raised tonight. I will get it to you prior to the 17<sup>th</sup>.

**Acting Chairman Vasti:** Yes. The next item on the agenda is the other business, the minutes of June 5, 2014.

**\*\*\*MOTION:** Mr. Fox made a motion to accept the minutes of June 5, 2014; seconded by Mr. Porath. Hearing all in favor; the motion was carried.

**\*\*\*MOTION:** Acting Chairman Vasti made a motion to adjourn the meeting of July 3, 2014; seconded by Mr. Casscles. Hearing all in favor; the motion was carried.

Respectfully submitted,

Kathleen Kivlehan  
Secretary  
Zoning Board of Appeals