

**TOWN OF STONY POINT
ZONING BOARD OF APPEALS
Minutes of February 18, 2016**

PRESENT:

Mr. Anginoli (absent)
Mr. Keegan
Mr. Casscles
Mr. Vasti
Mr. Porath
Mr. Lynch (arrived at 7:15 PM)

ALSO PRESENT:

Steve Honan, Attorney
Thomas Larkin, Fire Inspector

Chairman Wright

Chairman Wright: Good evening. I see by the clock it is 7:00 PM. I will call this meeting of the Zoning Board of Appeals of the Town of Stony Point to order; please rise for the Pledge of Allegiance.

We have a couple of items on the agenda. We will start off with a decision; I will take a motion from Mr. Casscles on the decision.

*****MOTION:** Mr. Casscles, offered the following resolution; seconded by Mr. Vasti.

In the Matter of Application #2015-07 of Homestead Hardware by Brad Stern for a variance from the requirements of Chapter 215, Article VIII, Section 39E of the Stony Point Zoning Code to permit the parking of one rental truck, a maximum of 20 feet long, with less than required parking spaces, providing 7 whereas 14 are required, in the front parking lot of premises located at 73 S. Liberty Drive, Town of Stony Point, designated on the Tax Map as Section 20.11, Block 2, Lot 21, in the BU Zoning District.

The applicant was represented by Brad Stern and the following documents were placed into the record and duly considered:

Application; Narrative; Notice of violation and appearance ticket; October 21, 2015 letter from Stony Point Planning Board Clerk; Surveys; photographs; area map; January 19, 2016 letter from County of Rockland Department of Planning; January 25, 2016 letter from Stony Point Action Committee for the Environment, Inc.

Additionally, members of the Zoning Board of Appeals personally visited the applicant's property and viewed it and the neighboring properties on or about January 17, 2015.

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 January 21, 2016 and February 4, 2016, and the testimony of the following persons was duly considered: Brad Stern; Frank Collyer; George Potanovic, Jr.; and John Bender.

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 a hardware store located at 73 S. Liberty Dr. in Stony Point, and has been operating in the North Rockland community since the 1950s, serving both homeowners and contractors. The applicant states that with the influx of competition in the local market, it is necessary to expand its product line by offering one 10' high x 8' wide x 20' long U-Haul rental truck to its customers. The applicant asserts that the availability of a U-Haul rental truck will assist its customers. Among other things, it would be available to assist customers in hauling

larger goods purchased in the store. It also asserts that the availability of a rental truck would be an asset to the community, and permit this long-time business to survive difficult economic times.

Chapter 215, Article VIII, Section 39E of the Stony Point Zoning Code requires that any parking space or area used for storage of a commercial truck or van in specified zoning districts may not be considered toward meeting the parking requirement. The subject premises is located within a shopping center and provides 7 dedicated parking spaces. The applicant desires to use one of those 7 spaces to park the rental truck when it is not on active rental.

A strict application of the Code provides that if the applicant is to store the rental truck in one of the 7 spaces, that space does not count toward the parking requirement, regardless of how often the truck is not on the premises, out for rental, or otherwise. In other words, even if the truck is rented 23 hours per day and so is not present on the site but for 1 hour per day, the parking space it occupies during that one hour it is on site still does not count toward meeting the parking requirements.

The premises are currently pre-existing, nonconforming as to bulk in regard to the parking spaces, as the current code would require 14 spaces. The addition of the rental truck would mean that the premises would technically provide 6 spaces instead of 7. Accordingly, the applicant received a violation notice in relation to the parking of the van, following which it proceeded appropriately to the Planning Board for approval pursuant to that Board's authority under the subject code section. The Planning Board then referred the applicant to this Board for consideration of an appropriate variance.

The neighboring businesses in the subject shopping center have not objected to this application. However, the Board did hear opposition from two representatives of the Stony Point Action Committee for the Environment, Inc. (SPACE), as summarized and supplemented in a letter dated January 25, 2016, which the Board has also considered.

The applicant testified that the addition of the rental van would not have any adverse effect on the actual parking availability on site since the owner and employees now park off site, thereby actually creating more parking availability. If the owner or an employee had their own van for personal use, it would be entirely lawful for them to park it there all day with no variance required, even if it were identical to the subject van for which approval is now sought. The only reason a variance is required is that this van is available for rental. Further, the subject rental van is about the same length as a pickup truck and provides absolutely no sight obstruction to traffic. There is sufficient room to back the truck up and turn it safely in the parking lot. The subject van would uniquely benefit this particular business in this particular location. Thus, in this particular unique situation, the strict application of the Code as to Homestead Hardware in this location creates an undue hardship.

Additionally, the application was duly referred to the County of Rockland Department of Planning pursuant to GML Sec. 239 L and M, and County Planning responded by way of a letter dated January 19, 2016, recommending certain modifications. First, County Planning requested an illustration depicting the parking spaces including the space which would be used for the subject van. The applicant subsequently provided a survey indicating that the truck would be primarily parked in the first spot closest to the cellar door on the subject premises, subject to availability of that spot if a customer were to park there while the van was out on rental. The applicant has indicated that if such were the case, it would move the rental van into the designated space soon as it became available again.

Second, County Planning requested a review by the New York State DOT. The letter was copied to State DOT, but no response or adverse comments of any kind from State DOT have been received. Further, there are no new curb cuts or State permits required in regard to this application.

Third, County Planning requested continued monitoring of the site by the Town and if more spaces are needed, a written agreement be made for reciprocal parking rights. County Planning also indicated that no vehicle should be permitted to park within the State right-of-way. The applicant does not request permission to have any parking in the State right-of-way, nor can this Board grant such rights. Further, the Town will monitor the parking situation and if it becomes problematic, will request the applicant to provide alternate solutions to any such issues.

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, so long as certain conditions are implemented and adhered to, 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 practical or economically feasible means. The alternates suggested by the opponents are not economically feasible and are beyond the power of this Board to implement or enforce.

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

The variance sought is not substantial. If the owner or an employee owned a van or truck of the same size for personal use, it could legally be parked in that location all day with no variance required at all.

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

The Board does not feel there will be an 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.

NOW, THEREFORE, BE IT RESOLVED, that the application for variances as set forth above is hereby approved, on the following conditions:

1. The rental van shall be limited to a maximum of 10' high x 8' wide x 20' long;
2. The rental van shall be parked in the first spot closest to the cellar door on the subject premises, subject to availability of that spot if a customer were to park there while the van was out on rental; if such is the case, the applicant shall move the rental van into the designated space soon as it becomes available again;
3. The truck shall be parked with the rear closest to the curb while it is stored;
4. There shall be no parking permitted in the State Right of Way;

5. This variance is unique to the business of the hardware store in the subject location and shall expire upon expiration of the use of such premises as a hardware store.

The matter is remanded to the Planning Board and/or Building Inspector for further consideration in compliance with all other applicable laws, rules and regulations.

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

Chairman Wright: The second item on the agenda is a new application.

Request of Douglas & Annalisa Badstein

A variance from the requirements of Chapter 215, Article VII, Section 30 B, to permit the construction of a shed with less than required minimum spacing between principal and accessory building: Required 15 feet Provided 3 feet at 22 Route 210, Stony Point, N.Y.

Section 15.03 Block 1 Lot 64.1 Zone RR

Mr. Casscles: Mr. Chairman, I would to recuse myself on this application.

Chairman Wright: For the record, Mr. Casscles is recuse himself from this application.

So, two (2) questions – is there any representative for the applicant here? Just for the purposes of establishing and having sufficient information to put it on the agenda for our next meeting, do any of the Board members have any questions; again only to make sure we have enough information to go into detail at our next meeting?

Mr. Vasti: I would like to get a little more information on the shed.

Chairman Wright: Ok, can I just have a representative come over and identify themselves and their address.

**Douglas & Annalisa Badstein
225 Route 210
Stony Point, New York**

Chairman Wright: “The testimony you are about to give is truthful?”

Mr. & Mrs. Badstein: Yes.

Mr. Vasti: Mr. & Mrs. Badstein, I could see that the variance you sought, this particular shed is very, very close; it’s like 3 feet and upon reading the application, I just want to clarify one thing, I’m a little confused at the way it is worded, it seems that there is a principle residence on the property, an accessory building and you also want to build a shed?

Mr. Badstein: No, there is no...

Mr. Vasti: So then the shed is an accessory building?

Mr. Badstein: Yes.

Mr. Vasti: Was there an existing shed there?

Mrs. Badstein: Yes.

Mr. Vasti: So the shed is already there?

Mrs. Badstein: There was no existing that we took down.

Mr. Vasti: Okay, then what is currently there where the shed was that you took down?

Mr. Badstein: The new shed.

Mr. Vasti: There is a shed there.

Mr. Badstein: There is just the primary residence and the shed.

Mr. Vasti: Okay, so this has already been constructed?

Mr. & Mrs. Badstein: Yes.

Mr. Vasti: And may I ask what the shed is used for?

Mr. Badstein: It is for storage. Right now there is a motorcycle sitting in it, but as I mentioned our basement takes on water so we can use the extra storage that would be above there.

Mrs. Badstein: We don't have a garage; we don't have attic space. We have nothing.

Mr. Vasti: Okay; that is very important and is the shed just one (1) story?

Mrs. Badstein: Yes.

Mr. Vasti: And how do you gain access into it?

Mrs. Badstein: Through the front doors.

Mr. Vasti: Front doors that swing open?

Mr. Badstein: Yes.

Mr. Vasti: So it doesn't have a garage door?

Mr. Badstein: No.

Mr. Vasti: Okay. Is it electrified?

Mr. Badstein: No.

Mr. Vasti: Is there water in it?

Mr. Badstein: No.

Mrs. Badstein: No foundation.

Mr. Vasti: No foundation; what is it sitting on?

Mr. Badstein: Its built on...the driveway comes all the way around the back of the house and it's on 6 x 6 board – special treated.

Mr. Vasti: Special treated lumber?

Mr. Badstein: Yes.

Mr. Vasti: Ok, thank you. Maybe if you could tell us a little bit more about it when you come back – what it is constructed of and how it’s put together.

Has anyone from the Building Department been out to look at it?

Mrs. Badstein: Yes, Bill stopped by.

Mr. Vasti: Is it the same dimensions as the shed that it replaced; or was it a little bit bigger?

Mr. Badstein: It’s a little bit bigger.

Mr. Vasti: How many square feet...what were the dimensions of the previous shed?

Mr. Badstein: It was either 10 x 12 or 12 x 12; so this one is either 2 feet bigger or the same size.

Mr. Vasti: It sits a little closer to the house?

Mr. Badstein: It does.

Mr. Vasti: Okay, thank you very much.

*****MOTION: Mr. Porath made a motion to place the aforementioned application on the March 3, 2016, agenda for a Public Hearing; seconded by Mr. Keegan. Hearing all in favor; the motion was carried.**

Chairman Wright: The site visit will be Sunday, February 28, 2016.

*****MOTION: Chairman Wright made a motion to accept the minutes of January 16, 2016; seconded by Mr. Vasti. Hearing all in favor; the motion was carried.**

*****MOTION: Chairman Wright made a motion adjourn the meeting of February 18, 2016; seconded by Mr. Vasti. Hearing all in favor; the motion was carried.**

Respectfully submitted,

Kathleen Kivlehan