**TOWN OF STONY POINT**

**ZONING BOARD OF APPEALS**

**Minutes of September 20, 2018**

**PRESENT: ALSO PRESENT:**

Mr. Anginoli (absent) Steve Honan, Attorney

Mr. Keegan

Mr. Vasti

Mr. Lynch

Mr. Strieter

Chairman Wright

**Chairman Wright**: Good evening. Welcome to the Stony Point Zoning Board of Appeals. I call this meeting of September 20, 2018, to order. Please rise for the Pledge of Allegiance.

The Pledge of Allegiance was recited and roll call taken.

**Chairman Wright**: We have a few items on the agenda tonight. We will start out with the decision for the request of Michael T. Kyser.

**Request of Michael T. Kyser – App. #18-06**

A variance from the requirements of Chapter 215, Article V, Section 15.A d.4-7 provided 3’6” for a pool patio with planter wall in a side yard; required 10’ located at 7 Sandyfields Lane, Stony Point, New York.

**Section: 14.03 Block: 2 Lot: 4 Zone: RR**

**\*\*\*MOTION: Mr. Lynch offered the following resolution; seconded by Mr. Vasti.**

In the Matter of Application #18-06 of Michael T. Kyser for a variance from the requirements of Chapter 215, Article V, Section 15.A d.4-7 for a pool patio with planter wall in a side yard, provided 3’6”, required 10’, on premises located at 7 Sandyfields Lane, Stony Point, New York, designated on the Tax Map as Section 14.03, Block 2, Lot 4 in the RR Zoning District.

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

Application; Failed Inspection Notice from Building Department dated 5/23/18; Survey(s); July 3, 2018 letter from Rockland County Department of Planning; Survey dated 7/23/18.

Additionally, members of the Zoning Board of Appeals personally visited the applicant’s property and viewed it and the neighboring properties on or about July 1, 2018.

 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 July 5, 2018¸ July 19, 2018, and September 6, 2018, and the testimony of the following persons was duly considered: Michael T. Kyser and Anthony Kyser.

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

 The applicant is the owner of the subject parcel which is improved with a single family home. In 2017, the applicant hired a contractor to construct an in-ground pool in his rear yard, pursuant to a permit obtained on the applicant’s behalf from the Building Department. The applicant and his contractor were under the impression that the required 10 foot setback was to be measured between the property line and the pool itself, and the pool was then constructed with that understanding. As constructed, the edge of the pool meets or exceeds the 10 foot setback, but a patio with a planter wall was also constructed adjacent to the pool which extends to within 3 feet, 6 inches of the property line.

After the pool was constructed in the fall of 2017, it was not opened until the spring of 2018, at which time an inspection was conducted by the Building Department for the certificate of occupancy. At that time (May 23, 2018), the Building Department issued a Failed Inspection Notice indicating that the full 10 feet was required from the property line to the edge of the patio and planter wall, not from the property line to the pool itself.

Consequently, with the in-ground pool, patio, and planter wall having already been constructed, the applicant now applies to this Board for a variance from the setback requirements to permit the patio and planter wall to remain in place as constructed.

No objections from any neighboring property owners were received.

On July 3, 2018 the Rockland County Department of Planning issued a letter wherein it made multiple recommendations. First, the County requested an as-built survey. The applicant has now provided one to the Board dated 7/23/18, and the Board is satisfied with the information provided thereupon. So, this condition is either satisfied or overridden to the extent the County is requesting some other or different information than that provided. Second, the County points out that the dimension of the variance requested is stated differently in various spots in the application and hearing. The applicant requests a variance of 3'6", which is what was contained in the public hearing notice and is the distance the applicant has represented to be between the patio and planter wall and the property line. So, this condition is either satisfied or overridden to the extent the County is requesting some other or different information. Third, the County points out that a review must be completed by the Palisades Interstate Park Commission. The PIPC was timely provided the application documents and did not provide any substantive comments within the time period provided by law.

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 variance would produce any undesirable change in the character of the neighborhood or a detriment to any nearby properties. No objections were received to the application from anyone including the immediately adjacent neighbor closest to the area in question.

(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, given the unique circumstances as set forth above.

(3) “whether the requested area variance is substantial”:

 The variance sought is substantial in terms of percentages but is mitigated by the circumstances outlined herein.

(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 in that the applicant’s agent, the pool contractor, built this patio into the prohibited set back without a proper understanding of the law and without first requesting a variance. However, this factor alone does not require the denial of the variance sought.

NOW, THEREFORE, BE IT RESOLVED, that the application for variance(s) is hereby approved on the condition that the applicant shall comply with all other applicable laws, rules, codes, and regulations, and the matter is remanded to the Building Inspector for further consideration in compliance with the terms and conditions hereof.

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

**Chairman Wright**: I will take a motion to accept the minutes of September 6, 2018.

**\*\*\*MOTION: Chairman Wright made a motion to accept the minutes of September 6, 2018; seconded by Mr. Keegan. All in favor; the motion was granted.**

**Chairman Wright**: The other item on the agenda is the request of Waldron Apartments, LLC.

**Request of Waldron Apartments, LLC (Richard Ryder, Jr.) – App. #18-08**

A variance from the requirements of Chapter 215, Article XIV, Section 95A – Expansion of a non-conforming use accessory building with no principal use, for a garage, at 55 Thiells Road, Stony Point, New York.

**Section: 20.05 Block: 1 Lot: 15.1 Zone: RR**

We have a letter from their attorney asking that this be postponed for one (1) month.



I will take a motion to suspend this for one (1) month.

**\*\*\*MOTION: Mr. Keegan made a motion to suspend Application #18-08 for one (1) month; seconded by Mr. Lynch. All in favor; the motion was carried.**

**Chairman Wright**: The next item on the agenda is the request of Sana Fernandez.

**Request of Sana Fernandez – App. #18-09**

A variance from the requirements of Chapter 215, Article IV, Section 11 – Conversion of a manufactured home into a one-family detached home (not HUD approved) Use not permitted at 134 North Liberty Drive, Stony Point, New York

**Section: 15.04 Block: 3 Lot: 7.3**

Is the applicant or representative of the applicant present? Please come up and identify yourself.

 **Anna Alfaro**

 **7 Terry Lane**

 **Stony Point, New York**

**Chairman Wright**: And what is your relationship to the applicant?

**Ms. Alfaro:** This guy cannot speak English and I am talking for him.

**Chairman Wright**: So do you speak English? Can you help translate, too then, or…?

**Unidentified female**: I speak English, but not so much Spanish.

**Chairman Wright**: If you could just stand over there, and identify yourself just so we can “break the ice” here and your name is?

 **Joan Nelson**

 **532 Route 340**

 **Sparkill, New York**

**Chairman Wright**: “All the testimony you are about to give is true?”

**Ms. Nelson**: Yes, to the best of my knowledge.

**Chairman Wright**: Just so you know there is a couple of stages to this. What we are looking to do is review the application and then we put it out for a Public Hearing. These are a couple of things you have to do. But, what we want to do before we get to that stage is take a look at the application and make sure that what you are requesting is what the application is saying. So we want to just go through that a little bit.

I just have a couple of questions upfront. When I looked at the application itself, and Kathy this would be on page #2, question 8 – this is type of appeal. There is nothing checked there, although my assumption is that it is a use variance.

**Ms. Kivlehan**: Yes, it is a use variance.

**Chairman Wright**: And the other thing was that when I looked at, or maybe it doesn’t need to be, but I was looking at the interest statement - page 7; there was nothing on there and that maybe proper. I was just wanted to clarify that.

Can you explain to us why you are here? What is it that got you here with the property designated in the application?

 (talk between the applicant and Ms. Nelson)

**Ms. Nelson**: What they are looking to do from the owner of the property is to buy the trailer that they are working on now. They were told that everything was fine and everything was good and they could move in and then this is what occurred.

**Chairman Wright**: Can you describe what occurred?

**Ms. Nelson**: This whole court hearing right now. They were told by the gentlemen/homeowner, or the property owner, that everything was fine. That they could rent the place for a couple of months and then start making bank payments to purchase it.

**Chairman Wright**: So as we understand it here, the Zoning Board of Appeals, so when I read through my understanding of the request is there was some structure there, the manufactured home, which was converted into a permanent home and the use of the property doesn’t conform to what it is now. And so the idea is to come to the Zoning Board to see if we could grant relief based on the circumstances of the case. Is that your understanding?

**Ms. Nelson**: Yes. That is the understanding. She thought it was perfectly fine to buy this. So they pursued to the bank and everything so that they would be able to purchase this.

**Chairman Wright**: So what is the purchase of whatever…our issue is not the purchase. The issue is the structure…is what has happened to the structure on the property itself?

**Ms. Nelson**: Okay.

**Chairman Wright**: Is that your understanding?

**Ms. Nelson**: I can honestly say…I know that there was an issue that was bought by…her husband had told me is that the Building Inspector was in and said that there was problems.

**Chairman Wright**: So she is the applicant’s wife?

**Ms. Nelson**: No.

**Mr. Lynch**: I have a question. The application by Sandy Joel and the property owner information is Sandy Joel here (pointing at application). They are both one in the same?

**Ms. Nelson**: I believe so.

**Mr. Lynch**: Only because you are saying purchase. It sounds like they are purchasing the manufactured home.

**Ms. Nelson**: They are looking to purchase the manufactured home. They were told just…

**Mr. Lynch**: Just the home?

**Ms. Nelson**: They were told it was fine and they would be paying rent for the property.

**Mr. Lynch**: So they are not the property owners?

**Ms. Nelson**: No.

**Mr. Lynch**: But, it is listed as the property owner.

**Mr. Honan**: I think, for clarification sake, I see Tomlins Trailer Park would be the owner of the actual real property. They lease the property to homeowners who either buy or rent the manufactured home that sits upon the lot.

**Ms. Nelson**: Yes, the same as a regular trailer park. You are purchasing the trailer as your residence, but renting the land underneath it.

**Mr. Honan**: So the applicant in this proceeding I believe would have to be Tomlins Trailer Park, the owner of the property as well as the owner of the manufactured home that has been expanded which is Mr. Fernandez and Mrs. Fernandez, if infact they have purchased it already.

**Ms. Nelson**: I don’t know either. None of us know that and that’s one of the problems.

**Mr. Honan**: If they haven’t purchased, I think the only person of interest is Tomlins Trailer Park because that’s been proven to be made and that’s the…I don’t know if we have…either of you representing Tomlins here today?

**Ms. Nelson**: Never talked to them. Never…there hasn’t been any conversations with them whatsoever.

**Chairman Wright**: I don’t know that the application is complete enough for us to move forward.

**Ms. Nelson**: Okay.

**Chairman Wright**: It sounds as though that there is property owner there and then there is the people who…and then there is the structure on the building I’m not sure…Steve, you can correct me if I am wrong, but it sounds like we need to get both parties as part of the application and then I think we can proceed from there. Does that sound fair so far?

**Mr. Honan**: I think you are correct Mr. Chairman. I believe that since what this application is seeking is to basically get relief from the MHC Zoning because a single family home had been built on this particular lot in the trailer park, manufactured home park, and that determination was made by the Building Inspector, Mr. Sheehan. So I think that the applicant, I think that you are right, the application is a combination of the owner of the…

**Ms. Nelson**: The gentlemen that says that he owns the property…the dwelling, and then the landowner.

**Mr. Honan**: Correct.

**Mr. Lynch**: I’m just looking at the top of the page, page #6; the address that is given is 134 North Liberty Drive. That is Route 9W. I went on-line and I just took, snapped a quick shot of the property itself, just to see, and I see that there is a few dwellings on there and I don’t know which is which, but if that’s saying this is question #6, 500 feet of the work road…is it the one way in the back?

**Ms. Nelson**: Can I see that?

**Mr. Lynch**: Yes. Circle the one please.

 (Ms. Nelson showing the map to the applicant)

**Mr. Lynch**: That’s right on the road. So you are going to have to adjust the application for #6, then too.

**Mr. Vasti**: Mr. Chairman, if I may make a suggestion. A couple of things.

#1 – We really should have either the Building Inspector here at the next meeting or someone from the Building Inspector’s Office to clarify this.

 #2 – The use of what the applicant wants to do is not permitted. That’s why it is in violation.

#3 – By granting a variance are we setting precedent for this…what appears to be a trailer park, which means a place where temporary homes are placed; not permanent.

**Chairman Wright**: Those are all valid questions and I think they are things we will explore once this becomes something that we accept as a completed application.

**Mr. Vasti**: I don’t think we have enough information at this time Mr. Chairman, to put this on the agenda.

**Chairman Wright**: I agree, but I want to get it so that they know what needs to get done.

**Mr. Vasti**: And I think we need somebody who could represent the applicant that can articulate exactly what they are trying to do.

**Chairman Wright**: I think where we are here…if I was you I would consider getting an attorney and I will explain why. Not because it’s imminent it’s just that the kind of variance requesting has very high thresholds hold to clear and your best doing that with an attorney.

**Ms. Nelson**: Okay.

**Chairman Wright**: I also think that the attorney can represent you here and then explain to us in more detail the overall circumstances because I think we are at a loss at that.

I think if you get those, and I also say if you get an attorney have the attorney contact Kathy and see if we can’t get the application…

**Ms. Alfaro**: Excuse me, I’m representing him because the guy has no money. And the guy has no money to pay the rent every month because he does not live here. He lives in Puerto Rico. He move there because he can work and he has family and he have a little girl sick. That is why he is not coming here because for him to come here he need to pay to fly. That is why I am representing him.

**Chairman Wright**: I understand and I can sympathize. However, we are bound by certain things by law that we have to do. And you don’t have to get an attorney. I would say though it is a much more difficult challenge to find the relief that you want if you don’t have one.

There is not much I can do about that. Again, the thresholds are pretty high and now that you have another party in here…I would suggest that you talk to an attorney and let him see what he can do and maybe give you some guidance. I wish I had better news for you, but unfortunately…

**Ms. Nelson**: No, I understand.

**Mr. Vasti**: I have a question for the representative and I hope perhaps she can understand the question. It’s not going to be posed at you in any way to make things more difficult, but for my own understanding from what you just explained to us about the hardship of the owner not being able to come from Puerto Rico and not being able to pay the rent if there are such financial difficulties then how is the applicant going to make these modifications to the home. He has an architect involved here. That’s going to cost a substantial amount of money.

**Ms. Nelson**: It was already paid. He already paid the architect. Then more problems started.

**Mr. Vasti**: Alright, if he paid the architect what work was done on the house to make it permanent? Has it been attached to the ground? What did the Building Inspector find when they went up there?

I think we need the Building Inspector. We need the architect here and we need somebody from the trailer park here so that we can have a “meeting of the minds” and try to get a good comprehensible plan of what’s going on to try to help this applicant as best we can and we are here to provide relief if we can, but as the Chairman mentioned a use variance of this nature is extremely substantial. There’s a set of criteria that have to be met. It has to meet all five (5) criteria and in order to do so it has to be a very concise, well laid set of plans that follow the Codes of the Town so that we can come to a conclusion whether this is going to pass or not.

**Ms. Nelson**: Okay.

**Chairman Wright**: There is not much we can do for you tonight, but I think if you contact an attorney that would be a good first step and then I think you’d be better to understand what you need to do in order to come back here with a completed application that we can take up and move forward.

**Mr. Lynch**: We also need the trailer park owner. Definitely, he has to be here.

**Chairman Wright**: That concludes our business. So I will take a motion to adjourn.

**\*\*\*MOTION: Mr. Vasti made a motion to adjourn the meeting of September 20, 2018; seconded by Mr. Strieter. All in favor; the motion was carried.**

 **Respectfully submitted,**

 **Kathleen Kivlehan**

 **Secretary**

 **Zoning Board of Appeals**