**TOWN OF STONY POINT**

**ZONING BOARD OF APPEALS**

**Minutes of October 4, 2018**

**PRESENT: ALSO PRESENT:**

Mr. Anginoli (absent) Dave MacCartney, 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 October 4, 2018, to order. Please rise for the Pledge of Allegiance.

The Pledge of Allegiance was recited and roll call taken.

**Chairman Wright**: We have two (2) items on the agenda. The first one is the continuation of a new application for 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**

**Chairman Wright**: Is the applicant or the applicant’s representative present? If you could just go up to the lecture there and identify yourself?

  **David Sosa – attorney for Mr. Fernandez**

 **164 Church Street – Suite 6C**

 **New Rochelle, New York**

**Chairman Wright**: So where we were last week, just to kind of recap where we were, was that we have the application and we weren’t quite sure that the application was complete so we referred it back to Anna, I believe her name is, and we just asked her to take the application and see if they couldn’t complete it so that we could accept it. I have the application here with some notes if you want it, but at this point the application…and there hasn’t been any other updates since then, so the application as we received it during our last meeting is still incomplete, but I will let you give us some more background to it because we aren’t quite sure where it was. So if you could give us some more background and we do understanding of the request.

**Mr. Sosa**: I don’t have any other information. With all due respect I was just called, literally today, and I didn’t have a chance to review anything.

**Chairman Wright**: Alright, so here is the…if you want this, this is the request…

**Ms. Kivlehan**: That is the original application that was handed in and there is a blank one there if you want to start out from the beginning.

(Mr. Sosa received the original application and was given instructions on how to fill same out.)

**Chairman Wright**: Some of the questions we had, and if anybody else wants to refresh them a little bit, was it was a trailer that had some work done on the trailer and it is on a trailer park. So we had to ask for the owner of the trailer park to be present too. I think his name is Mr. Tomlins? So the question is, and then I think the application was for a use variance, and so what we were explaining last week is a use variance has a very high threshold so that is why we recommended they get an attorney because it is a much more complicated and a higher threshold on that…

**Mr. Vasti**: From what it appears, this is my interpretation; it appears that the applicant wants to put a permanent house in a trailer park on property that he doesn’t own. So there is a lot of uncertainties here of how he is going to do that and that’s why it’s a use variance. That parcel of land is not suitable for a use of a permanent building.

**Mr. Lynch**: It is also a manufactured home and zoned for manufactured homes.

**Mr. Vasti**: This is unusual so we need to get as much clarification as possible in order to understand what the applicant wants to do. We are here as a Board to provide relief when we can, but as the Chairman said, Mr. Wright, a use variance has a high threshold. You have to literally meet all five (5) requirements and it is one of the most difficult variances to grant. So to allow the applicant to do this on property he does not own would be…

**Chairman Wright**: Is that Mr. Tomlins?

**Ms. Alfaro**: Yes.

**Mr. Vasti**: Okay, so maybe Mr. Tomlins can give us some more information?

 **(waiting for Mr. Tomlin to arrive)**

**Chairman Wright**: So we are assuming you are Mr. Tomlin’s?

**Unidentified Male**: Yes, I am and I just got out of the hospital, but I am trying to help out.

**Chairman Wright**: We will take it easy on you. If you could just identify yourself, and where you live.

 **Curtis Tomlins**

 **34 Hurd Avenue**

 **Garnerville, New York**

**Mr. Tomlins**: I own the trailer park at 134 North Liberty Drive, Stony Point, New York, and Mr. Fernandez lives is a tenant of mine.

**Chairman Wright**: So where we are on this is that we understand that he’s made some changes. The changes seem to be somewhat permanent/altered the, as we understand it, altered the temporary home…

**Mr. Tomlins**: Yes, I understand that for about two (2) years now he has been going at that.

**Chairman Wright**: So the issue we have to resolve…we have to get a…he has to submit a use variance…

**Mr. Tomlins**: Excuse me my hearing isn’t that good.

**Chairman Wright**: Yes, he has to submit a use variance…

**Mr. Tomlins**: A use variance, okay.

**Chairman Wright**: You would have to be a party to that.

**Mr. Tomlins**: That is what Mr. Fernandez told me.

**Chairman Wright**: Mr. MacCartney you can correct me if I’m going askew on anything.

**Mr. MacCartney**: No, all sounds correct so far.

**Chairman Wright**: You have to be a party to that and they have to explain why this is the only use that would work on that property and the other question, and I’m not sure what the answer is, but Mr. Sosa, as their attorney can maybe help you out there, is how does the leased property and a trailer park become now, I guess a whole property, is one of the things we are kind of stuck on is how does that work and Mr. Sosa maybe you can work through that one, but, it is one of the questions we are going to dive into in the public hearing just to make sure we understand it and if the use variance is granted that it’s going to hold up legally after we make a determination.

**Mr. Tomlins**: Okay, I don’t know if Sandy has shown you the print-out of the lay-out. I don’t know. Did he show you that already?

**Chairman Wright**: Yes.

**Mr. Tomlins**: It’s been there for 80 years. That says something in itself. He got his permit and we went all through that. What is the conclusion?

**Chairman Wright**: So we are just looking to make sure that the application is filled out correctly and Mr. Sosa will work with you and the applicant to fill it out completely and then it will come back to us and then we will schedule a public hearing…

**Mr. Tomlins**: Excuse me – a public hearing?

**Chairman Wright**: Yes, there will be a public hearing.

**Mr. Lynch**: Legally we have to do that. We have to have a Public hearing; legally for a certain amount of time frame so this way everybody in that vicinity knows of it; what’s happening.

**Mr. Tomlins**: You got me. I really don’t understand the whole situation. It went through the Building Inspector and spent thousands of dollars getting this thing done. He overbuilt it.

**Mr. Vasti**: Well that’s the…

**Mr. Tomlins**: I know that’s beside the point, but…

**Mr. Vasti**: He did something to a structure in a trailer park which is made for mobile homes; not permanent homes. You own the property; correct?

**Mr. Tomlins**: Yes, the trailer is still there. He just overbuilt it.

**Mr. Vasti**: Are you trying to sell him property there?

**Mr. Tomlins**: No, I’m not selling anything. This has been a nightmare for me.

**Mr. Vasti**: If he builds something permanent, it can’t be moved in a trailer park, that doesn’t go in that zoning; you understand. You’re not zoned for that. You are zoned for a trailer park.

**Mr. Tomlins**: What he did was he improved on and made a nice little house. I don’t know what to say about it. What he is telling me it shouldn’t be there or…

**Mr. MacCartney**: I can jump in if you want.

**Chairman Wright**: Thank you.

**Mr. MacCartney**: Mr. Tomlins, my name is Dave MacCartney, the attorney for the Zoning Board. What I understand is that the Building Inspector has made a determination, and that’s his right and it’s his duty to make determinations like this, but what he did he made a determination that whatever improvements that were made rendered that structure no longer a mobile structure. They rendered it the equivalent of a single family detached dwelling. The Zoning District in which your property is located prohibits that. It permits only mobile homes. So the Building Inspector has said this is no longer a mobile home. So, therefore, you are putting the property to a use that is not permitted in that district and if you want to keep it that way you have to go to the Zoning Board and you have to get a use variance.

**Mr. Tomlins**: This is just for this one (1) unit?

**Mr. MacCartney**: Just for the one (1) unit.

**Mr. Tomlins**: I have 80 units there. This is only for his unit; right you were telling me that?

**Mr. MacCartney**: That’s my understanding. It’s only on this particular unit so the applicant, Mr. Fernandez, is here applying to the Zoning Board for relief from the Zoning Code. To do that, he is the applicant, but he needs the owner of the property to be involved in the application. The owner has to sign off and say yes, I am aware of this and I support it or no, I am the owner of the property, you can’t apply to change my property to some other use. I don’t want it that way. I don’t agree with this.

**Mr. Tomlins**: I was never asked. This was all approved through the Building Inspector. I understand what you are saying.

**Mr. MacCartney**: So technically now before the Board is the application was submitted, but it’s not complete. It’s got some problems with it. So the applicant now with you or without you, depending upon whether you support it or you don’t and the applicant’s attorney are going to leave here tonight and go and work on the application and see if they can make it into a complete proper application. I would presume that they will be speaking to you about that and you are free to do whatever you see fit; either join the application or not. That’s between you and Mr. Fernandez and then once that application is complete and, if it is complete, if it ever becomes complete then it comes back before the Board and then the Board will schedule a public hearing on another date, that’s required by law – anytime some bodies asking for that type of relief the Board can’t grant it without a public hearing. So they will set a date for a public hearing and it will be here and anybody that is interested can come and speak. You can come and speak. You don’t have to come and speak. And, then that’s the procedure that’s being followed right now.

**Mr. Tomlins**: Now I understand what you are saying. Okay. Do I have to do anything more tonight to facilitate this? Truthfully I just got out of the hospital so I don’t feel well.

**Mr. MacCartney**: I’m going to tell you the Board does not want you to do anymore tonight. You just got out of the hospital and you are not feeling well. So all you should do is talk to Mr. Fernandez and his lawyer after you leave here or some other day between now and the next meeting and we will know where everything stands by the next meeting.

**Mr. Tomlins**: Okay, that is fine. You will tell Mr. Fernandez when the next meeting is.

**Mr. Vasti**: Two (2) weeks.

**Ms. Kivlehan**: October 18.

**Mr. Tomlins**: Thank you very much. That is fine.

**Chairman MacCartney**: Mr. Sosa, do you have any other questions or Mr. Fernandez have any questions for us?

**Mr. Sosa**: I wasn’t really listening. I was translating to Mr. Fernandez.

 **(Mr. Sosa and Mr. Fernandez talking amongst themselves.)**

**Mr. Sosa**: He says there are also other homes there that are like his; did they ask for a variance?

**Chairman Wright**: No, not that I am aware of. This is an enforcement action that the Building Inspector went out with so you will have to deal with the Building Inspector in that respect. All we can focus on, regardless of what everyone else has done there, is the application before us.

**Mr. Sosa**: So no variances have been granted before?

**Chairman Wright**: I don’t know.

**Mr. MacCartney**: I’ve been advising this Board since 2006; so 12 years, and there hasn’t been an application to my memory atleast during that time period for that location.

**Chairman Wright**: Let us do this and we will come back to you in a second if you want. The other item on the agenda tonight is for the minutes of September 20, 2018.

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

**Mr. Sosa**: So he said why did the Town approve his application with the changes? He paid a lot of money…he paid this fee, that fee. The plans were approved. It was his understanding that everything was okay. I know it is a different entity.

**Chairman Wright**: My understanding is, is that the Building Inspector, I guess before the final approval was done saw that it was out of compliance and that is why Mr. Fernandez is here now. It was out of compliance. Did he get a summons on that, Kathy?

**Ms. Kivlehan**: Yes, he is in court now. I can get you a copy of the violation.

**Chairman Wright**: What you might want to do Mr. Sosa, if you are going to be representing him, is you might want to see Ms. Kivlehan and get the documentary evidence on there on why he is appearing here. So there is a history here about some violations and court appearances that would probably give you a more complete picture of the application.

**Mr. Sosa**: Thank you.

**Chairman Wright**: Are you good Mr. Sosa because if you are, we will go ahead and adjourn the meeting.

**Mr. Sosa**: Absolutely. I will be in touch. I apologize.

**Mr. Vasti**: Thank you very much. We do what we can. We want to try and help in any way we can, but it has to go through the procedures and we feel deeply for your applicant.

**Chairman Wright**: One of the things you might want to look at Mr. Sosa, I think there was a…what was it Kathy…

**Ms. Kivlehan**: A survey of the property to see exactly where it is on the parcel. It was never handed in with the application.

**Mr. Sosa**: Okay.

**Chairman Wright**: With that, unless there are any other questions I am going to take a motion to adjourn.

**\*\*\*MOTION: Mr. Vasti made a motion to adjourn the meeting of October 4, 2018; seconded by Mr. Strieter. All in favor; the motion was carried.**

 **Respectfully submitted,**

 **Kathleen Kivlehan**

 **Secretary**

 **Zoning Board of Appeals**