

**TOWN OF STONY POINT
Zoning Board of Appeals
Minutes February 6, 2014**

PRESENT:

Mr. Anginoli
Mr. Keegan
Mr. Casscles
Mr. Vasti
Mr. Fox
Mr. Porath

ALSO PRESENT:

Dave MacCartney, Attorney
William Sheehan, Building 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 four items on the agenda tonight. The first one is the request of Yummy Chinese & Sushi, Inc.

Request of Yummy Chinese & Sushi, Inc. – App. #13-14

A variance from the requirements of the Town of Stony Point Zoning Code Chapter 215, Article IX, Section 52-B-2: Exceeding Square Footage of Sign: Permitted 40 square feet, provided 80 square feet; and Chapter 215, Article IX, Section 52-B-2: More than one sign facing Route 9W, located at 8-10 South Liberty Drive, Stony Point, New York.

Section	20.07	Block	3	Lot	69	Zone	BU
----------------	--------------	--------------	----------	------------	-----------	-------------	-----------

I will take a motion to open the Public Hearing.

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

Chairman Wright: Is there a representative for the applicant here? Please come forward and identify yourself.

Ralph Heavner – attorney for applicant

Mr. Heavner: Mr. Kang Lin, who is the owner of Yummy’s Chinese & Sushi, Inc., is also here present with me. If that is okay, I will ask him to just take a seat?

Chairman Wright: Sure. Can we just have his name again?

Mr. Heavner: I beg your pardon?

Chairman Wright: Can we just have his name again?

Mr. Heavner: Yes Kang. K – A – N – G; L – I – N. He is the applicant in this matter. The application before you today is with regards to two matters as set forth by you, Mr. Chairman. The first one with regards to a sign; it's a – I will refer to as a "sign" for the rest of the meeting if I can, but it's truly an awning that has signage upon it. I know there was a field visit so I am sure most of you who went on that field visit; you saw it. It's right there. It's designed to be seen. It's a sign for business in Town and the Town permits 40 square feet; according to the Code and the Building Inspector and we have an 80 square foot sign.

The second portion of this is that the sign faces U.S. Route 9W and according to the Building Inspector initially the violation that was served it's a – there is two signs facing U.S. Route 9W, but at some point I would ask for the input from the Building Inspector because I believe that this sign – it's on two sides of a building, I believe one sign faces U.S. Route 9W and the other portion of the sign faces Highview Avenue. Highview Avenue is a connecting street on the north side of Yummy's Restaurant that connects 9W to the backside of the shopping center and there is trailer there and there is a rental units as well as it is the rear side of the main property where Yummy's Restaurant is located as well as the rear side of the I.B.N.A. Spoon River Realty property. So I respectfully represent to you that the sign does not – there is not two signs facing U.S. Route 9W; there is one sign facing U.S. Route 9W on the front of the building and on the north side of the building, where the sign goes around; that faces Highview Avenue.

The first thing I would like to address with the Board, is whether an undesirable change will be reduced in the character of the neighborhood or a detriment to neighborhood properties? I think the answer to that is firmly "no". If you are familiar with the area, which if you live in Stony Point you drive up and down 9W on a regular basis, you will notice that this is the last building on the right hand side as you approach the Farley Bridge. It is consistent in character in the neighborhood. There maybe a few homes that are across the street, but mostly they are commercial properties. Next to it is a vacant liquor store; which is on the same property, and then there is I.B.N.A. Spoon River, then there is Chase Bank and a very large shopping center. It even has a Children of America and the gymnasium and all of that. On the other side of the bridge there is commercial properties. There's the Shell Gas Station which is actually on the opposite side of the street and on the opposite side of the bridge I know there was some concern with a yellow sign in Town with some red lettering and I respectfully submit to you that if you see the Shell Station it's all yellow and it's all red. My client has an awning with, which is yellow with red lettering that indicates its name and there is some black lettering with regards to the telephone number. I don't believe that this change is going to – that this requirement for a larger sign is going to be detrimental to the neighborhood. As a matter of fact, we are looking to promote our businesses here in Stony Point. I think anyone that drives up and down the road and sees this sign will recognize it and it's not going to cause any hazards.

The second matter I want to address is whether the benefits sought by the applicant can be achieved by some other method feasible for the applicant to pursue other than an area variance. And again I submit to you the answer to that is "no". The sign is needed for the business. It has to have a sign. It replaces a previously existing sign that was maroon in color; maybe not as bright, but the awning next to it is maroon and I am sure when a new person goes in and takes over that property they are going to want to put a sign up. This building is very close to 9W; historically. In the last three years, it's been extremely close to 9W because the State road widening project and the bridge job – a very large portion of that parking lot was taken away from Yummy's Restaurant. They are unable to put a sign on the road.

1. If they did, it would probably block the motorist's visibility as they went up and down the road.
2. There is a very large telephone pole and one of our new street lights that are in front of the building which is actually the same location, according to my recollection, where a sign may have existed years ago, but has not been there for a very long time.

So a sign is certainly needed.

The third issue, whether a requested area variance is substantial? Again I submit to you the answer is “no”. We are not looking to put up a sign that has never existed. This is actually the replacement of a sign. This sign was there previously and was taken down because it was ripped up and torn up and he needed to put a new sign up and he put up another similar sign; an awning sign, with signage on it.

It's also in scale with the building. It extends out to the sidewalk and stops. Instead of being slopped down like the previous sign, it comes out pretty much flat and then rounds off and comes square down so I believe that's one of the reasons why the square footage might be a little bigger is because it doesn't just slant down it comes out and rounds down which adds to the square footage. It only covers the front of the establishment – on the front portion of the sign and the portion that faces Highview Avenue just extends about 15 feet, I believe, to other side of that building and there is nothing that it interferes with. It is just a slopping grade that goes down.

The fourth issue whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? Again I believe the answer to that is “no”. It's simply an exterior sign that they are looking to put up. It's not going to have any health or other adverse effects to the physical environmental conditions in the neighborhood.

This is the 9W business corridor where we are trying to promote businesses to come into Town; promote businesses to take over these empty stores that exist up and down Rt. 9W. We've got a tenant who's been there for a very long time running a very successful business. A successful business that he and his family run. He goes to work, he sweeps, he mops, he prepares the food, he assists in cooking the food, he even delivers the food. This is a true family business here in Stony Point.

The last issue – whether the alleged difficulty was self-created? Well I think that is a mixed answer there. I think my client ultimately has responsibility for this sign because it's his sign and he paid for it. I think in fairness to my sign he contracted with this outfit from New York, Yo Chu Sign, Inc. (spelling unknown). He had to dig around to find a copy of the receipt and he paid \$3,100.00 to this sign according to the proposal. They came, they took down the old sign, they put up the new sign. He was expecting them to follow the local Code. He was expecting them to get a Building Permit, expecting them to do whatever was necessary – it was not done. I was not involved in the litigation, but I know that after he received this notification in Town Court about the violation he did go to New York and tried to contest with the sign company the services they provided and the added expense that they've cost him; my fee, the application fee, and some other things maybe some fines that may exist and I don't believe he was successful down in New York, but he did follow-up on that. So, I think it is very fair for a local business person who is very busy on a day-to-day operation with their business to contract with someone to put up a sign and expect them to follow Codes. That's their business; that's what they are involved in doing and we expect him to follow the rules and Codes.

On just a few other things, I just want to mention that to the Board that this business has been significantly impacted in a negative manner for the last three years prior to the construction of the bridge. Imagine having your place on a thoroughfare and suddenly the road is closed for almost two years and no one is driving up and down and no one is driving passed your business.

That's what happened to Yummy's Restaurant. They are cut-off from their customers on the north end of the bridge; unless they took a very (inaudible) route to find themselves on the other side of the bridge to serve their customers – for the customers to come and visit this restaurant and I am sure all of us who live north of the bridge found alternative routes to get to our homes and we weren't driving through that detour to Yummy's Restaurant. It was not on our plans of where to go. Also, during this time period extensive amount of construction equipment; there was debris, dirt, noise, fumes – all kinds of things that affected this business and these are hardworking people. They continue to run their business and they are continuing the business now. A lot of obstacles to overcome and they've done that. This is an obstacle that they were not anticipating due to their contract with this sign company, but we're hoping to clear that up with the Board here today.

In that regard, we respectfully request the Zoning Board to grant this application of Yummy's Restaurant; Chinese & Sushi, Inc., with regards to this sign that is existing there now and to direct the Building Inspector to issue a Building Permit so this sign can lawfully remain on these premises.

I thank you for your time.

Chairman Wright: Any questions from the Board?

Mr. Vasti: Mr. Chairman, I have some questions. I'm going to kind of work in reverse to your point of a self-created hardship. Did your client apply for a Building Permit prior to purchasing the sign?

Mr. Heavner: He did not.

Mr. Vasti: Well that's the first mistake I think he made because if he had applied for a Building Permit he would have found out immediately that there is a Zoning Code of 40 square feet. The fact that he went out and spent an inordinate amount of money on a sign – that's something he did without taking the proper steps and when you want to erect something or modify a business you need to find out from the Building Department exactly how to go about that.

Mr. Heavner: May I address that at first?

Mr. Vasti: Sure.

Mr. Heavner: Mr. Vasti, respectfully I agree with you. However, we live in a world where we contract with people. We pay them good money to do services whether it's a homeowner, looking to do something to their home, and suddenly find out that a Building Permit was not applied for. These things happen on a regular basis. I'm not excusing it, but it's not something that's just very abnormal. It doesn't happen on a somewhat of a regular basis. There's lots of work being done in this Town that may or may not have a Building Permit that some homeowners don't have a clue on the Building Code as it exists today like you are all aware of and the Building Inspector and I'm aware of. My client didn't come to me and say listen I'm looking to put a sign up what should I do because I know, and I would of advised my client to get a Building Permit. But, some of these businesses in Town like preparing and serving Chinese food, you don't do a lot of construction work and you don't have a lot of contact with the Building Department. You don't know. So, I agree with you it was his responsibility to do that, but I think it's excusable.

Mr. Vasti: Well, I disagree with you sir; respectfully, because when you open up a business here you come under lots of permits – electrical, plumbing, all sorts of permits and you cannot operate a business, you cannot get a certificate of occupancy unless you comply with a law, you cannot modify your home. If something happens to your home and you didn't apply for a Building Permit, you may jeopardize lots of things; your home, your insurance, your family. But, moving forward, I want to pursue another venue and my question to you – you've made a couple of points here that the road has become wider and the sidewalk and parking areas has become narrower, wouldn't that negate the necessity of such a large awning? Wouldn't it be more rational to have a smaller awning that would have the same effect?

Mr. Heavner: Well I think the sign was put up during the construction phases and there was lots of obstacles that were in that parking lot - #1; and #2 – no if you look at the sign; the sign is truly, in my opinion, to scale with the building. It may not be consistent with the Building Codes as it exists, and keep in mind that the 80 square feet includes the portion of this awning that wraps around the building to the north side of the building. That's very significant. That's probably a good portion perhaps of why this sign is too large and I submit to you that that might not be a violation under the Building Code since it is not a sign that faces – two signs that face 9W.

And, is the sign necessary – well, I will tell you what, that could be the case. I welcome you to drive up and down 9W like I have done specifically, not as a resident or a person who runs businesses in this Town, but as a person on behalf of my client to look at the size of the signs in other areas to look at the size of the sign, if for no reason, at the Shell Station. The entire structure is advertising. You look at the bank, our Sterling Bank; you look at Chase Bank and the size of that sign and all the shopping centers and all their signs there is a lot of signage out there and if you look at little Yummy's Restaurant and an awning that's a sign, I don't think it's, in my opinion respectfully, is unduly of size; shall I say.

Mr. Vasti: Had you an opportunity to review the letter that the County sent to the Building Department and it was copied to the Zoning Board members.

Mr. Heavner: Did not.

Mr. Vasti: Concerning the precedent setting by permitting extra large signage. They were against it. They were against the larger awning and the secondary sign simply because of a precedent setting example and also of its relatively close proximity now to a major road. You had not seen that?

Mr. Heavner: I have not seen that letter.

Mr. Vasti: They were not in favor of this application receiving a variance.

Mr. Heavner: Well, respectfully I don't think...it's nice to have the County's input, but I think the County has a lot of other problems these days except putting a comment on a sign for Yummy's Restaurant and also as I mentioned this tenant who took over this space about five or six years ago, he did not ask for the road to be widened. That is something that was put upon him in this location. He didn't ask for that. This is something the State mandated upon the Town and we had to live with it. So he is at no-fault with regards to that. I don't believe the County, unless it sets forth in the letter, even took the time to come out and look at this sign.

Mr. Vasti: I don't know what the County did. Now your applicant besides having the sign, does your applicant advertise in other methods; use other venues to promote his business?

Mr. Heavner: I'm not aware of that and I don't believe that's relevant, but I'm not sure if he does not. I do have a menu here that he hands out if you have some take-out there. I went to his place and asked him for a menu, so I know he has that form of advertising.

Mr. Vasti: One of the questions that is often asked when a variance is being sought, is there any other method feasible to obtain an effect, or obtain what you want other than exceeding the variance that's allowed? I think in this case, there are several other ways – there's advertising in local journals like the Pennysaver, or there's hand-outs and all kinds of things that are delivered through the mail. I just don't want what you said to seem like this is the only way that this business, this particular merchant, has. There's no other way in the world that this merchant can attract business other than having two signs. First a very, very large awning that's double what's permitted by Code and then a secondary sign and whether you say it faces one street or another street, it's quite obvious, cause I was out there, I did visit the property, and I've actually been a customer of the enterprise; both of those signs are visible from 9W. So I mean not only is one variance being sought for a sign that is double what's allowed, but there's two signs and that might be a little excessive.

Mr. Heavner: If I could address what you just raised Mr. Vasti, with all due respect, if you visit any post office in Stony Point, Tomkins Cove or anywhere else around this County, go by the garbage can. Look at all the Pennysavers that people throw away. Look at all the hand mailers that they send out to folks that they throw away. So to suggest that there's other forms of advertising, I don't believe unless there's members of this Board who actually run certain businesses I don't think there's any true proven form on how you can advertise when you are paying what we would like to think is a premium, either in rent or other consideration, that you have to be along a major road there is a reason for it. As we all know the old adage – location, location, location. You want to be on Route 9W you want to be seen and you should have a sign and I don't think, like I said, if you drive around and see these signs around Town that have been approved by the Planning Board or the Zoning Board there are some very, very large signs in this Town and a lot of signs on certain properties. I believe now that the Walgreen's, I think I counted 36 signs, if you would like to count the "in Walgreen's", the "out Walgreen's" with the arrow and all the light posts that are there. So there's a lot there. He has a very small pie shaped piece of property and the only place he can put a sign is on his building and that's the awning.

Mr. Vasti: Thank you.

Chairman Wright: Any other questions?

Mr. Porath: Yes, I would like to ask a few questions. You mentioned that there's no room for him to put a sign out by the sidewalk; I will use an example like Walgreen's, they have a sign on the front of their store – they have a big sign out by the street, is that simply not possible at that location?

Mr. Heavner: In my opinion, and I can ask the Building Department's input if they want, the answers "no". They've put a...he has a very small section in front of him. They've eliminated all of his parking. He had to make a deal with the landlord that when they took some of the property, the State condemned some of that property and they acquired it for the road widening project, that he would be allowed to have cars, now keep in mind who visiting his restaurant to pick-up food, this is take-out, to have to park on the other side of the building and walk a considerable ways, not for a guy like myself, but perhaps for someone who is in a hurry or if it's raining out, to have to walk all the way across the building after they park their car when he used to have, when he first rented that space, parking spots right in front of his place. People come in, park the car and run in and get their order and run out and out the door they went. That no longer exists. There's parking spots for two delivery vehicles and there is some blacktop in front of the building, but I think if more than two cars park there they will block everybody in and it will be a problem.

Mr. Porath: I think you confirm my thinking that it's not feasible to think that a sign could be put out in front of the store, that the store itself is the only means where the sign...my other question is...

Mr. Heavner: And that's also, if I may, is because there's no place to put a sign post and if you do put a sign post out there and a sign, it's going to actually block people's view as they are driving their cars and approaching the bridge; heading north.

Mr. Porath: I want to switch over to the sign that is on the side of the building that – I think of that building as a corner lot and it happens to have Highland Avenue is one side and 9W is the other. Would you say that that sign on the side of the building is visible because 9W tends to curve distinctly to the right once you pass it going over the bridge and that is why that sign on the right is visible?

Mr. Heavner: I think it could be visible from there. I mean, if you are looking for it you could certainly see it. I think it's on a curve and you should be paying attention when you are driving around that curve and not looking to your left or right at signs; but, I think there's enough people who go up through Highview Avenue that it is a short-cut for many. I use it as a short-cut. It's a legal way to drive through Town and that's where the sign faces.

Mr. Porath: I guess my concern is – I don't know and I guess I'm not sure of the Code, but because if a sign that faces Highland and a sign that faces 9W if it's even visible from the other road is that considered two signs? I don't know the Code or is it just...should it be considered that's sign is on Highland Avenue and it is within Code is my impression. Bill, I don't know if you can answer that question or if I'm breaking...

Mr. Sheehan: I can answer all of the questions.

Mr. Porath: Okay.

Mr. Sheehan: I don't know if you want me to speak...

Mr. Porath: Okay, maybe I will come back with that because I am questioning if a sign that's a corner lot and you can see the side sign from the main road is it really two fronts? So I will throw that out as well.

Mr. Sheehan: (inaudible)

Mr. Porath: And I guess my last question is – you touched upon that the signs along 9W, that is our retail corridor and the signs run the gamut of every size, shape, form and color; I guess I want you to come back to it, is that sign in character with the fact that there seems to be every kind of sign under the sun...I think the one consistent trait of our signage is there is no consistency and I think that serves in favor of this variance; in my opinion. I've been in communities where the signs are very...everyone is just alike. Like small communities in Connecticut, every sign is black and white, and of the same size and it's like there's nothing different. This seems to be where no matter where you go along that corridor there's a lot of signs that are every shape, size and form and finally I guess I would like to note the concern that we can't afford to have businesses struggling in our Town. I just like to have you make the point, or respond to the question – Does the owner believe that this sign is in fact critical to his success in keeping this business viable?

Mr. Heavner: Absolutely. He has to have the sign. When that sign went into disrepair, he had to find a way to get that sign back up; especially during the turbulent times of the last three years during the construction phase to have a sign up there so that people would know that Yummy's Restaurant was still in business.

Mr. Porath: Would it be fair to say that if the variance wasn't granted it would negatively impact his business?

Mr. Heavner: It will have a serious impact on his business. I believe it will.

Mr. Porath: That's all I have for now.

Mr. Keegan: I just want to get a couple of things on the record since this is a rather large variance; its double the size. Counselor, who ultimately is responsible for acquiring the Building Permit, is that the owner of the building or is that the person who...

Mr. MacCartney: The applicant would be. You have the one seeking the benefit from it ultimately bears the responsibility for applying for the permit. He can delegate that visa his own contract with his contractor as between himself and his contractor. He may have an understanding between the two of them which one is to obtain it. But, ultimately whoever obtains it is for the benefit of the applicant.

Mr. Keegan: Okay, so what you are saying is it would be a matter of contract with the provider to see to it that a Building Permit was acquired or he assumes the responsibility himself.

Mr. MacCartney: What I am saying is – it's a matter that the two parties of the contract are free to delegate or allocate amongst themselves, but ultimately the permit is the responsibility of the applicant. No matter who actually does it, the permit is obtained and if a permit is not obtained it's the responsibility of the applicant to make sure that it was obtained.

Mr. Keegan: Thank you. I just wanted to get that on the record.

Mr. Heavner: The owner, until a few weeks ago, was Hy Flan, Inc., which is my...there's been a closing on that property. I was not involved in that, but I've learned about that. But, at the time the application was submitted the owner of the property gave me permission to submit this application on behalf of Yummy's and he also has a lease which requires that he not jeopardize the property owner's interest in the property with violations or things of other natures. So that is why he is here; at his own expense, with the permission of the landlord.

Mr. Keegan: Okay. The second question is, how does this sign; the replacement sign, compare to the original sign. Is it exactly the same size, is it bigger or...

Mr. Heavner: It's bigger in the sense of the original sign did not wrap around the building - #1; and #2 – the original sign, which is consistent with the maroon sign that is there now for the liquor store, it was, I would call an "old fashioned" awning, it just came down on an angle and then came back in like a triangle. Whereas this one, is a little bolder where it comes straight out and then rounds out it comes underneath, as well as...

Mr. Keegan: Is it the same frontage...the same footage in the front facing 9W or is it bigger?

Mr. Heavner: I don't want to misspeak – I believe it's the same length from one end of the building to the other end of the building; as far as the front section of the sign, not including the part that wraps around. It doesn't go any further then I believe the prior sign did. It starts at the front door to the establishment and goes to the end of the building.

Mr. Keegan: Was there a permit required for the original sign?

Mr. Heavner: I don't know. I'm not aware of that. It could of pre-existed the sign ordinance; I'm not sure.

Mr. Keegan: That's all I have. Thank you.

Chairman Wright: Mr. Casscles?

Mr. Casscles: To get back to the building permit portion of it. When he took over the business, he had to do some renovations and everything there, right?

Mr. Heavner: I am sure that he contacted the Town and got a "certificate of occupancy" to run his business...

Mr. Casscles: So he needed a Building Permit for that?

Mr. Heavner: That's correct. I believe that was issued.

Mr. Casscles: So he knew when he went into business there, that he needed a Building Permit to do something? But, he neglected to get one this time; he laid it on the contractor. All it would of taken him was a phone call and he would of known that the thing was obsolete and when he was doing his renovations the first time he knew that he had to be posted in the window before he could do any work. He didn't post anything in the window this time, so he should of known that I can't put this new canopy up because I don't have a Building Permit in the window. So it was really self-created. Just because he was negligent that doesn't do away with the self-creation.

Mr. Heavner: I'm not arguing with it. Ultimately it was his responsibility. He also has a number of other permits that he has to do on an annual basis, which when you run a business or a restaurant it's something that you are in tuned with. Like the Board of Health comes to you every month, every year, and says listen you need to re-certify on your Board of Health. They send you a notice. Most of us...I'm a restaurant owner as well, you sort of overlook that. It's not in the top of what you need to do because it's an annual re-certification. They send you a notice, an application, and you fill it out. Other than that, there aren't too many other applications that most people look into do unless they are making some improvements. I submit to you that the Code is much stricter right now and I think you know that. I don't think homeowners know that if they have replacement windows put in, that it requires a Building Permit. I know a lot of roof projects that have been pulled to a halt because people have said "really ". They've called me "really, you need a Building Permit for a roof". I tell them yes. That's what the Building Code requires now. It is my client's responsibility, but there's this whole educational part that people just don't know because it's not part of what they do on a regular basis and it's not as if he was putting on an addition to the building. That would probably require more thought. This was just simply – I don't know. I'm just supposing now. You replace an oven in the kitchen because it goes bad and you replace an awning outside because the other awning was ripped and there was nothing of substantial nature for my client. He certainly didn't mean any disrespect. For goodness sake, he is right on 9W. Everybody drives right by everyday and sees what he is doing.

Mr. Casscles: He did put it up or have it put up without knowing he had a Building Permit. He increased the size of it; you said that yourself.

Mr. Heavner: That is correct.

Mr. Casscles: The other one wasn't lit with the lettering?

Mr. Heavner: That is correct. It had lettering on it, but I don't think...

Mr. Casscles: It wasn't lit.

Mr. Heavner: It wasn't lit; no.

Mr. Casscles: So all these different things that he did, should raise the "red flag". Maybe I should call the Town Hall. The number is there; that's what they've got a phone for. Him not doing it doesn't make it right.

Mr. Heavner: I'm not suggesting for a moment it doesn't make it right. I'm simply saying that there's a lot of things that happen that we have to tell people you require a permit for this and most people will at first go back on their heels and say no I don't. I don't need this and we need to show them, yes you do. So that's...like I say he signed a proposal with a sign company that basically told him that we do this, not a problem. We will measure it out, we will take care of it, not a problem. Give us your money. He gave them the money and that was it. Fast forward quite a few months, quite a few months where suddenly we have a violation for this sign which was coupled with a violation in Town Court because there was insufficient heat in the kitchen of a Chinese restaurant; which is being addressed in Court as well. You want to talk about something that doesn't make sense the Judge commented that that's something that doesn't make sense having insufficient heat in a Chinese kitchen when the woks are all fired up, all back and forth, and fryers are going. But, that's how these two violations came at the same time for my client.

Chairman Wright: Mr. Fox, do you have any questions?

Mr. Fox: I think the questions I had – was he the owner of the building? Obviously, that's been clarified; he is a tenant. The 80 square foot is the total with the front and the side.

Mr. Heavner: That's correct.

Mr. Fox: You know what the frontage is in the front as far as that's concern and the side? You have a breakdown on that?

Mr. Heavner: I do not.

Chairman Wright: Mr. Vasti has a follow-up and Mr. Anginoli will go after.

Mr. Vasti: I just wanted to follow-up. I personally think a 40 foot limit on a canopy type sign is a reasonable limit because I think all of us have seen and witnessed on television and other newspapers and magazines when there is a wind storm that these canopies fly off. They become projectiles. They injure people. They fly in the air like sails. They go through storm windows; through windshields. They land on people's cars while they are inside them. It's quite scary. Anything in a wind storm can become a projectile and certainly a canopy sign of this magnitude with such an overhang in the frontage lends to that ability for the wind to pick it up, rip it off, tear it from its moorings and send it into the air and God only knows where it could fall. Do you feel that a 40 square foot limit is unreasonable, Counselor?

Mr. Heavner: Well Mr. Vasti, I'm not going to answer that question because I don't think that's appropriate for the presentation as far as the Town Code is concerned. I don't think that you can refer to Counsel that comments on the Zoning Board's Rules and Regulations in general are inappropriate to address at a Public Hearing, however, I would like to address your safety concern because I think it's an important one. I don't think it's the size of the sign or the awning shall we say, I think it's, and I'm not an engineer, but whether it is 10 feet or whether it is 40 feet or 50 feet, I think it matters on the design and the person who installs it if it's done according to the proper requirements and specifications is it properly mounted to the wall. I also wish to add, if I can, that the wind is not going to pick this awning up, because on your site visit, I'm sure you noticed that the bottom is sealed. It has a cover that goes on top and there's a big plastic seal underneath it that cancels the lights and the other things so wind cannot get underneath that and pick that up. I'm not sure if that was designed for that purpose, but I would think as a lay person that when you see a sign with that cover on their that's probably going to prevent that wind from hitting that awning and ripping it off the building. And, I think your concern is a good one. Lots of other signs in Town that I'm sure would come down before this awning would come down in a storm.

Mr. Vasti: My last and final point, would be that I feel very uneasy about the fact that a contractor would come over to a commercial business and put up a canopy, a sign, and especially one that costs over, did you say \$3,100.00...

Mr. Heavner: \$3,100.00 was the cost.

Mr. Vasti: And the contractor didn't have the responsibility or the knowledge to go forward and say you know you need a Building Permit for this. That would make me very uneasy about the quality of the work because really it wasn't inspected. The other part of filing a Building Permit is not only alerting the Building Inspector of your intention of what you want to do, but there is a more important component and that is an inspection after the work is performed. This was never inspected, therefore, I have no confidence in the quality of craftsmanship of how this particular signage was affixed to the building; if its moored properly, anchored properly. It could fall on a customer any day.

Mr. Heavner: We can defer that issue that you have certainly with the man whose department is in charge of inspecting this awning. We are not asking for a Certificate of Occupancy. We are asking for permission for a Building Permit and we do have to go through that process where Mr. Sheehan is going to have to either go out or send his assistant out to inspect this sign to determine whether it meets the Town requirements and the State Code requirements. If it doesn't, we will know about it. We will not be issued a "C.O." until we make Mr. Sheehan's department happy.

Mr. Vasti: I would hope so. Thank you.

Chairman Wright: Mr. Anginoli?

Mr. Anginoli: Just one question. Is this the first business your client has ever started?

Mr. Heavner: I don't know. That's not a question I asked my client and unfortunately I'm not able to communicate with him this evening to ask him that question.

Chairman Wright: I just have a couple of questions. A lot of the things you described that impact this particular business, would they be any different than the one that the people across the street...you have a printing shop across the street, you have barber shop across the street, you have the liquor store obviously right next to him, which could be occupied; could they all come under the same exact arguments and ask for the same kind of sign given their signs.

Mr. Heavner: I suppose anyone can make any application for anything. I'm sure the Planning Board and the Zoning Board has seen a whole variety over the last 20 or 30 years of different types of applications. All these buildings are different in Town. This is almost like, you can call it, like a strip mall; almost, but it is only two buildings instead of there being 12 buildings. You don't have all the usual stores that you would see in a strip mall somewhere. It's only two and it is in a Business District.

Chairman Wright: What I'm trying to get at – how would we, as a Board, if everybody else out there is seeing if this was a granted variance and everybody else is "gee, here's a way for us now" because we already know the arguments. Let's go before the Z.B.A. and make the same exact arguments and then essentially if we granted them all variances it would be over-riding the Code of the Town. So I am struggling with how do we uniquely identify the need to that particular business apart from everybody else who is geographically...even those immediately across the bridge; the guy that has the barber shop and you have a telephone business over there – I'm just trying to work at how we would I be able to differentiate his from everybody else in that same immediate area?

Mr. Heavner: I thank you for that question, but my job today is simply to focus on Yummy's Restaurant and not re-writing the sign Code. Unfortunately, between there's a lot of issues that the Town Departments have to address, between the Building Department, the Planning Board, you have the Technical Review Board and then it gets to the Zoning Board as to looking at an area, looking at the type of building and the type of business and then I guess the last thing we look at is the type of sign. I think when it comes to anything that was similar to what my client...where my client is presently located, with a vacant building now next door, which hopefully will be a tenant there soon and the Chinese restaurant that he has...there's always been something there. There was a supermarket there years ago. There's always been something there that the focus of the Zoning Board would be on this size of the building and in the size of the awning. If you look at it, you're not going to bump your head on the awning, it doesn't extend above the building. It runs from the front door to the end of the building and again there is a second part that runs around to the other side to Highview Avenue. To address whether a similar buildings like that; whether that's in your judgment, inappropriate.

Chairman Wright: Any other questions?

Mr. Porath: Yes, I just have a follow-up question. You may have answered it, so I apologize if I asked it again. I don't hear really a dispute that an oversight accorded. It doesn't sound to me like it was intentional or in my opinion it doesn't seem like it was intentional as far as getting the permit in advance, but that obviously acknowledgement was made that hind sight 20/20 he should of gotten a permit. I don't think you are disputing that. The question is – if you weren't granted this variance, what would be the result of that; what would happen to the owner, what would he have to do at that point?

Mr. Heavner: He would have to take the sign down and the sign is a pre-measured, pre-constructed sign. He certainly no longer on good terms with this sign company. He will have to find another sign company. He will have to pay the expense to have it removed and then put an application in for another sign awning which will be much smaller in nature and this \$3,100.00 he can say good-bye to because I'm sure the sign can't get used again because the design, the dimensions and the lettering that is on it. It would be very simple for all of us to say well just cut 10 feet off of it. Well maybe you are cutting the first three numbers of the telephone number off of the awning. I don't know. It would be very difficult for my client and very costly for my client; shall I say it is a lot of egg rolls. A lot of take-out food that he would have to prepare and clear to replace this \$3,100.00 and then to pay somebody else the cost of removing it and then putting up a new one.

Mr. Porath: So it would be a significant financial hit?

Mr. Heavner: I believe it would, especially for a very small business here in Town. We are not talking corporate America we are talking a small business.

Mr. Porath: Just one last question. Is the store front next to the business, is empty. Is that correct?

Mr. Heavner: Presently it is empty.

Mr. Porath: The business just down the street, just a couple of doors down from the barber shop, that former law office – that is empty, isn't it?

Mr. Heavner: That's empty as well.

Mr. Porath: So there are some businesses that are shut down or not ever open there, so it's probably a struggle for a small business to make it in that corridor anyway?

Mr. Heavner: I would think that the parking for the three; the two locations that you mentioned, are probably, in my opinion, significant concerns. For instance, if you are a lawyer you want to have a closing you can only put three cars in the parking lot. Where are the other five cars going to park. It is very difficult. I am sure that might be an issue. And once again, this parking area for the former liquor store and the new tenant whoever it's going to be and the Chinese restaurant they've lost about five or six spots because of the State's road widening project.

Mr. MacCartney: I have a quick legal question of Mr. Heavner. Does the contract itself address itself in any way to who is to obtain a permit?

Mr. Heavner: It does not. It is a very basic – I would be happy to hand Counsel a copy of the proposal. It's a very basic proposal. It doesn't provide for much of anything except for what your penalty will be if you don't pay on time.

Chairman Wright: So I just want to throw this out to the committee because it is about a quarter to eight; we've been on this for about 45 minutes, we have two other items on the agenda, but if you have questions feel free, but just be mindful of the time. Any other questions for Mr. Heavner?

Mr. Vasti: Yes, Mr. Heavner. Do you happen to know what the ratio for sales: delivery versus walk-ins of your client? How much business is conducted walking into the store, driving in and walking in versus how much is delivery to the home or other businesses that order by phone?

Mr. Heavner: You say walking – you mean like driving there and parking your car?

Mr. Vasti: Yes and getting out of the car walking in. Do you know what the ratio is of walk-ins to delivery?

Mr. Heavner: Not a question that I asked my client when I was preparing this application.

Mr. Vasti: Certainly the answer would help us understand the necessity of such a large sign. It would support the need for it. Well, if you don't have that information...

Mr. Heavner: I don't have that information, but I will give you my own personal reference here. I'm driving down the road and I'm hungry for dinner. I pass Yummy's Restaurant. Hey, let's have Chinese food tonight. When I am driving down the road and other people are doing the same thing, I don't think too many people are looking through the yellow pages in Stony Point to find out who sells Chinese restaurant. I think we all sort of have the places that we go to on a regular basis – if we are north of the bridge or south of the bridge.

Mr. Vasti: What is the seating capacity in the restaurant?

Mr. Heavner: I noticed four chairs. One table with four chairs when I was last there.

Mr. Vasti: Is that the total seating capacity?

Mr. Heavner: I don't know.

Mr. Vasti: So it's really not a place you would expect a crowd to eat in?

Mr. Heavner: I believe it's primarily; the way it's designed, take-out.

Mr. Vasti: Thank you.

Mr. Heavner: Sure.

Chairman Wright: Any question for Mr. Heavner.

(no response)

Chairman Wright: Thank you Mr. Heavner. We appreciate it. Do you have anything else?

Mr. Heavner: No, I don't. Thank you for your time and consideration this evening.

Chairman Wright: Anybody from the public wish to have any in-put. Mr. Sheehan would you like to come up? Could you just identify yourself for the record.

William Sheehan – Building Inspector

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

Mr. Sheehan: Yes. I just want to clarify a few things and probably answer some of your questions. First of all, a free standing or a pylon sign which would require Planning Board approval and would also need to be at least 10 foot off the property line, which would basically put it in the middle of the driveway. So that's really not feasible.

As far as the two signs, if you noticed the way I denied it, I denied it two signs facing 9W. The sign facing Highview, is not before you. Our Code reads that if a building or a business is on a corner, they are allowed to have one sign facing each street; which they do in this case. Except that what I did, was on the 9W side I considered it two signs the way it is lettered. I think the north end of it, it probably says "Yummy's", north end of the canopy; and on the south end of the canopy I think it says "Take-Out". So that's where the 80 square foot is. Just what's facing 9W; not the sign facing Highview.

Another fact is, if there was no lettering on that canopy he would walk in, get a Building Permit, put it up and that would be the end of it. The canopy is really not what's before you. What's before you is the lettering and only the lettering that's facing 9W.

I know the County had written a letter I believe it states something to the effect that they believe our sign ordinance is fair so, therefore, they should meet the requirements of a sign ordinance. If you remember, Walgreen's, CVS, Provident, Shop Rite – they all sent the same letter. The County sent the same exact letter on those businesses. I believe Shop Rite had 36 variances. Walgreen's had 20 something. Obviously, our sign ordinance in today's world is probably not large enough.

So I just wanted to bring that to a point that first it's only the signs facing 9W, it's not the canopy, and as far as precedent the County has said that in their letter, but they also said that in the same exact letter that they sent to every other sign in the last two or three years that has been before this Board and those signs have been granted. I just wanted to make that clear.

Mr. Porath: Bill, in your opinion, I want to make sure I hear this right, are you saying that the Town's zoning ordinance for zoning for signage should be updated?

Mr. Sheehan: We spoke about it when we were codifying the Code and we are always trying to do that, but we didn't want to make it too broad because of some of the small businesses or the small buildings we don't want signs too large. Now there is a...it's either 40 square feet or I believe 10% of the façade, but then when you get into the large buildings, like Shop Rite, if they put 40 square feet on Shop Rite, I think one of the pharmacy signs is probably 40 square feet...so we, when we didn't change it, actually we did change it we went from 40 – I think it was 20 and 40; now it's 40 and 60. If that was one business in that building, they would allow 60 square feet. Since it is two businesses in one building, it's 40 each. We kind of felt that that's the Zoning Board is here if they felt that it was reasonable that is one of the reasons we didn't change the sign ordinance; that we would leave it up to the Board.

Mr. Porath: That would give them the opportunity to pick their spots?

Mr. Sheehan: Yes, because we don't want...certain places...but, what I heard tonight is the canopy is a big issue, and rightfully so, but I just want to make it clear that it's the lettering...if there was no lettering on the canopy they wouldn't be here. They would be getting a Building Permit and if it was installed correctly and wind loads, snow loads and that type of thing they would end up getting a "Certificate of Compliance". So I just wanted to make sure everybody is aware that it is the lettering. I think if you probably took out the "take-out"...I think the "take-out" is on the south side, I'm not sure, I forget how the sign is, if you took the "take-out" off the sign you probably wouldn't need a variance. I am not saying that they should, but I just wanted to make that clear.

Mr. MacCartney: If I just might, for the sake of clarity, I haven't seen pictures of the signs, but the measuring of the 80 square feet, so what you saying that is not 80 square feet measured on the area of the whole awning, you measured 80 square feet on just the lettering?

Mr. Sheehan: Just lettering. And the reason I said two signs is because I took the canopy out of the equation. So I'm visioning Yummy's up on the building, take-out up on the building because there is a large area between the two lettering. That is why I said two signs. If they had a line from one to the other, I would consider that one sign and it would be that much more square footage if you had some type of decal between connecting the two letters or two words, I would consider it one sign. But, that is why I did it that way.

Mr. Casscles: So the one on Highview, doesn't even...

Mr. Sheehan: No, because if Highview wasn't there then obviously it would be three signs. But, they are allowed to have a sign facing each road. And, I am sorry for that confusion because I didn't even know, the attorney listening to him, he was confused about that also and that is why I actually put it two signs facing 9W so there wouldn't be any confusion for the Board in case I wasn't here because I think this thing has been going on for a while.

Mr. Vasti: Mr. Sheehan, can anything be done with the second sign to make the variance less substantial?

Mr. Sheehan: Well obviously...yeah if it was smaller obviously. In this case, the way it was fabricated, is the actual canopy or the skin of the canopy is actually the lettering. I don't even believe they, somewhere like on the liquor store is probably canvas canopy where they embossed the letters on there – I think this is probably printed right into, let's call it plastic, I don't even know what the material is.

Mr. Vasti: Yeah, polyurethane.

Mr. Sheehan: So I don't think it could, without taking the actual skin down, do anything about it.

Mr. Porath: So I'm clear, the fact that it says Yummy's and take-out you consider two signs. So if it said "Yummy's Really Good Take-Out" and it was one continuance sentence it would be considered one sign?

Mr. Sheehan: One sign, but the square footage would be larger because I would have to add in what was between the two signs as far as square footage of the sign itself. I didn't count the canopy itself because that doesn't require...

Mr. Casscles: So if you connected them it might be 100 square feet.

Mr. Sheehan: One sign 100 square feet; versus two signs 80 square feet – correct.

Mr. Keegan: Just one question, Bill. If this variance is granted, we could be assured that the Building Department will go and inspect it and make sure that it is properly mounted and safe for the public.

Mr. Sheehan: Oh yes. Regardless, if you didn't grant it and they took the letters down they still would have to get a Building Permit and it would have to meet wind-load, snow-load, installation and the whole nine yards.

Mr. Keegan: Thank you.

Mr. Casscles: So if it's substandard right now, no matter whether he has lettering on it or not, it's not going...he wouldn't be here.

Mr. Sheehan: Well unfortunately, we haven't looked at specifications or how it was installed because between going to issuing a violation and there was some back and forth, I guess, between the tenant and landlord who was going to come get the permit and we ended up writing him a ticket to court so unfortunately the canopy has been up for, however, how long and we have no idea if it's up correctly.

Mr. Casscles: Do we know when they are removing it anyway?

Mr. Sheehan: If it doesn't need the wind and snow-loads, absolutely they would have to either beef it up, fabricators would have to come in and beef it up or remove it, yes.

Chairman Wright: Anyone else?

Mr. Heavner: I would like to add something. Mr. Sheehan, in the time this awning has been up and this process has been going on, have you received any complaints about this sign being in disrepair?

Mr. Sheehan: We haven't received any complaints, no.

Mr. Heavner: Or that when you've driven by it, have you taken a look at the sign and perhaps observed that it wasn't meeting up to the wind-load or the snow-load or anything of that nature?

Mr. Sheehan: Well like I said it is still standing. I have no idea how it was installed.

Chairman Wright: If there is nothing else on that, then we will go ahead and move along. Is there anyone else in the Public have any comments?

(no response)

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

Chairman Wright: The next item on the agenda, is the request of Robert and Britta Bush.

Request of Robert and Britta Bush – App. #13-12

A variance from the requirements of the Town of Stony Point Zoning Code Chapter 215, Article IV, Section 12-F – Converting a one family to a two family in a RR District; use not permitted, at 664 North Liberty Drive, Tomkins Cove, New York.

Section 10.02 Block 3 Lot 4

Chairman Wright: This is a continued Public Hearing that had been postponed for the last couple of meetings. Is the applicant present or a representative?

Unidentified Male: The applicant is not present. He was supposed to be present, but I contacted him yesterday to confirm that he was coming. He has to go back into the hospital. He has advised not to make the trip. I have a letter from his doctor again; so based on the short notice I didn't want to just call and say we are asking for an additional adjournment, but at this point he can't make it. I do have a letter if...

Chairman Wright: If you could just quickly, just identify yourself:

**Andrew Cohen – attorney
163 Airport Executive Park
Nanuet, New York**

Mr. Cohen: So I apologize for the last minute change, but it wasn't anything that I expected either. I understand Mr. Sheehan is going to be away so if the Board will allow another adjournment until such time as...I am looking at you because I am not sure what you, you said you were going to be away for a few weeks...

Mr. Sheehan: Well the Board can comply. I am out of town until the 24th of February.

Mr. Cohen: I'm not that...well today the 6th...if you will grant another adjournment, as much time as you possibly can, because he is going back into the hospital – he advised me.

Chairman Wright: What is the likelihood, and I am just, this is speculation, I am just trying to get a sense so the Board can get a sense so they can make an informed vote...what is your sense that he would be able to appear; what will probably be our March meeting because...

Mr. Cohen: He was all fired up to come as of about a week ago, so I think he...unless medical issues prevail and he can't come yet again it would be his intention to come. He was planning on coming.

Chairman Wright: And do you...so there are two things we can do. One we can just say we take a vote and just have him come here next week in March, but is there anything additional I guess we could still open up and say is there anything more that you would have to add in terms of furthering the position of the applicant...

Mr. Cohen: The only...I mean he was supposed to bring paperwork; you had asked for the C.O. – I don't have it and the buyer's attorney on the contract, I don't have a title report which would normally have the C.O. and I think I could probably get a copy from Mr. Sheehan, but Mr. Bush was coming down with paperwork so there's that. You had asked a question regarding the application, particularly #8 – what the monthly carrying costs were and we had come up with approximately \$1,700.00, but again that would be something that he could speak of better than I can. I am just getting the information from Mr. Bush.

Mr. Casscles: It was not only item #8; it was item #5 and 11, also.

Mr. Cohen: #5 was the amount paid for the entire parcel. He had answered that as well. It was an inheritance. There was no amount paid initially for the entire parcel.

Mr. Casscles: And what was #11, can you answer that?

Mr. Cohen: The amount of mortgages and other income (inaudible) carrying on the property in question? There is no mortgage on the property.

Mr. Casscles: There is no mortgage, no loans or anything?

Mr. Cohen: No.

Chairman Wright: I would say too that the economic argument in my mind would be a critical one for the applicant to make on granting the use variance.

Mr. Casscles: You said \$1,700.00 on...

Mr. Cohen: \$1,700.00 for carrying. From the economic argument it is two-fold. They are living upstate because she is up there with her mother and he is there with her and the house is down here. So they are not in it so he is carrying it. So there is the carrying charge, the other economic issue is the value has diminished by it being a one-family versus a two-family which is substantial.

Chairman Wright: You can do your own homework on that – the threshold is really going to be is it gaining a reasonable rate of return and your applicant or you are going to have to be able to make that argument to the Board if we are going to grant that variance.

Mr. Cohen: Yes. I would prefer that he be down here for that particular argument for sure.

Mr. Vasti: Sir, is the potential buyer/tenant still living in the secondary building?

Mr. Cohen: Yes.

Mr. Vasti: Okay. Is the sale still pending?

Mr. Cohen: Yes.

Chairman Wright: With that, the motion would be should we...is there a motion to keep the Public Hearing open and reschedule it for the first meeting in March?

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

Mr. Cohen: Thank you very much. When would that be?

Ms. Kivlehan: March 6, 2014.

Chairman Wright: The next item on the agenda is the continuation of the request of Kevin Maher.

Request of Kevin Maher – App. #13-13

An appeal of the Town of Stony Point Building Inspector’s decision (App. #13-09) for property located at 133 Central Highway, Stony Point, New York.

Section	20.10	Block	2	Lot	59	Zone	R1
----------------	--------------	--------------	----------	------------	-----------	-------------	-----------

Chairman Wright: I think where we left off on that one, we were still dealing with the “standing” issue so I would ask at this point if Mr. Maher if you have another items on “standing” you want to provide to the Board and then we will let Mr. Sheehan, if he has anything, and the Public, if they got anything they want to add, we will see if we can come to a conclusion on that.

Mr. Maher: Good evening. The only thing I have to add to that issue about “standing” is a document that I sent to Mr. MacCartney for his review first so that he could advise the Board. Since I’ve been submitting a whole bunch of applications for grants to finance a lot of projects here in Town, I know I’m going to need additional help in my department, so I went to the Rockland County Personnel Office and requested copies of inspectors, junior engineers and I also got a copy of my job title; Town Engineer. When I got that, at the bottom of the document it clearly stated that a Town Engineer is an appointed Public Officer and Public Official. So I believe that establishes “standing” and that’s the Rockland County Personnel Office who would have passed judgment on my being hired here. The only adjustment to that would have been the residency requirement which was passed shortly after I came on board where the Town just, through its own local law, stated that I had to be a resident of New York State. So it’s my opinion that the “standing” issue has been answered by the Rockland County Personnel Office.

I would rather at this point ask Mr. MacCartney to offer his opinion on that since I gave the document to him first.

Mr. MacCartney: I don’t know what you are referring to.

Mr. Maher: I had...I dropped off a document to your office; it was a letter.

Mr. MacCartney: Anything that you want to submit to the Board, you have to submit to the Board.

Mr. Maher: Oh, I am sorry.

Mr. MacCartney: I’m not providing you with legal advice. I am the attorney for the Zoning Board of Appeals.

Mr. Maher: Fine. I have a copy of it here. I can make more copies later on. That is not a problem. I didn’t know. I was just trying to help.

Mr. Porath: Kevin, can I ask you a question just so I am sure?

Mr. Maher: Sure.

Mr. Porath: Are you submitting...is this matter...are you submitting this matter as what you are saying as an Officer of the Town...

Mr. Maher: Yes.

Mr. Porath: Or as a resident?

Mr. Maher: Both.

Mr. Porath: Both.

Mr. Maher: As Officer of the Town. Unfortunately, this document is how I see it. It is very poorly photocopied. I will give this to you and you can pass it on to Ms. Kivlehan.

Mr. Keegan: Kevin, just one thing. At a previous hearing, I asked you specifically were you here as the Town Engineer and you said, “No”. So now you are amending that and you are here as the Town Engineer?

Mr. Maher: I did put it in writing I was amending it because of the issue of “standing”. Even though I did believe that first the question was brought up about renters not having “standing”; State Law says otherwise.

Mr. Keegan: I am referring to what you testified to earlier.

Mr. Maher: I did that to solidify my position on the appeal.

Mr. Keegan: Fine. Thank you. That is the only question.

Chairman Wright: Any other questions for Mr. Maher?

(no response)

Chairman Wright: Thank you Mr. Maher.

Mr. Maher: Okay.

Chairman Wright: Mr. Sheehan, do you have anything you want to add to that?

Mr. Sheehan: Just briefly. I just wanted to point out that what Mr. Maher said that originally he applied or appealed as a resident and Mr. Keegan did ask him if he was a resident or Town Engineer that night and he did say "resident". Since then he has asked this Board to amend them. I don't know if this Board has actually made a decision on that, however...the bottom line still comes down to as a resident I think even Mr. Maher agrees that he has no "standing" that is why he has asked for the amendment after speaking to his own Counsel, but regardless with that Town Law is clear that Town Engineer is not an Officer of the Town regardless who he says he is and so forth. He also as alluded to that he is also a Code Enforcement Officer; which he's not. If he was, we wouldn't be here right now because then he can go issue Mr. VonHein all the tickets he wants. Obviously, he hasn't cause he can't.

But, in any event even if a Town Engineer was an Officer, which again he's not, he still has to be "aggrieved" and in this case the Town Engineer is not an "aggrieved" party. So, therefore, it is my argument that regardless he doesn't have "standing".

Chairman Wright: Thank you. So I think at this point what we probably want to do, I will take a motion to go into Executive Session and discuss some legal matters related to this particular case.

*****MOTION:** Mr. Porath made a motion at 8:09 PM to go into Executive Session, pending litigation; seconded by Mr. Vasti. Hearing all in favor; the motion was carried.

Chairman Wright: We will go into Executive Session. I am not sure if we are going to have a ruling afterwards, so we will let the public know when we are out of Executive Session.

*****MOTION:** Mr. Casscles made a motion at 8:19 PM to reconvene to regular Zoning Board of Appeals meeting; seconded by Mr. Fox. Hearing all in favor; the motion was carried.

Chairman Wright: Mr. Porath has a motion that he would like to make.

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

In the Matter of Application #13-13 of Kevin Maher, an appeal of the Building Inspector's October 18, 2013, letter concerning Violation No. 1189 to Erich and Kimberly VonHein.

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

Application and attachments including: 10/18/13 letter appealed from; 12/2/13 letter from William Sheehan; 12/3/13 letter from Rockland County Highway Department ("County Highway"); 12/3/13 certified mail receipts; applicant's submittals at 12/5/13 ZBA meeting; 12/12/13 letter from Rockland County Department of Planning; 12/14/13 letter from Applicant to ZBA; 12/18/13 letter from Applicant to ZBA; 12/30/13 letter from Applicant to ZBA; 12/30/13 letter from County Highway; 1/10/14 letter from Applicant to ZBA counsel J. David MacCartney, Jr.; 1/30/14 letter from County Highway.

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, the application was heard before this board on 12/5/13, 12/19/13; 1/16/14, and 2/6/14, and the testimony of the following persons was duly considered: applicant, Kimberly Von Hein, William Sheehan; and

WHEREAS, all the evidence and testimony was carefully considered and the Zoning Board of Appeals having had due deliberation thereupon,

NOW, the Zoning Board of Appeals makes the following FINDINGS OF FACT and CONCLUSIONS OF LAW:

FINDINGS OF FACT

1. At all relevant times since February 2011, the applicant, Kevin Maher ("Applicant"), has resided as a lessee at 130 Central Highway, Stony Point New York.
2. In or about May, 2013, Applicant notified the Town Building Department of a condition concerning the foliage on property located at 133 Central Highway, Stony Point, New York, owned by Kimberly and Erich VonHein (the "Von Hein Property").
3. The Von Hein Property is located across the street from applicant's personal residence.
4. On or about May 30, 2013, the Assistant Building Inspector, Phil Valenza, issued a Violation Notice No. 1189 to the VonHeins concerning a violation of Art.VI, Sec. 215-23 C of the Stony Point Code relating to evergreens and foliage allegedly blocking the line of vision at the corner intersection where the VonHein Property is located (the corner of Central Highway and Sullivan Drive).
5. Applicant is also the Town Engineer for the Town of Stony Point, but he has no authority or jurisdiction to enforce or charge anyone with violations of the aforementioned section of the Stony Point Code.
6. An appearance ticket was issued on the violation notice summoning the VonHeins to appear on same in Stony Point Justice Court, but prior to the return date of the ticket, the VonHeins filed an application for a variance to this Board (the "VonHein ZBA Application"). The filing of the VonHein ZBA application automatically stayed the Justice Court proceedings on the violation notice previously issued.
7. While the VonHein ZBA application was pending, the VonHeins reportedly made various changes to the foliage on their property, including cutting and trimming it in various ways.
8. On October 17, 2013, the VonHeins appeared at the public hearing before the ZBA and formally withdrew their pending VonHein ZBA application.
9. On October 18, 2013, Town Building Inspector William Sheehan issued a letter to the VonHeins stating that he had inspected the VonHein Property on October 17, 2013, and found that the trees had been trimmed and were in compliance with the Code and, therefore, the violation notice was "hereby closed."
10. On or about October 31, 2013, applicant filed an Appeal to the ZBA of the October 18, 2013, letter from William Sheehan to the extent same stated that the VonHein property was compliant with the Code regarding vegetation in the front area of the property at the street line.
11. The applicant's application states the applicant's interest to be that of "tenant."
12. On December 2, 2013, William Sheehan issued a "Rescind Letter" to the VonHeins stating that the subject violation was rescinded.
13. Applicant sent certified letters to surrounding neighbors concerning his application and that same was scheduled to be heard on December 5, 2013, by the ZBA, but did not notify the Building Inspector or Building Department, which is separate and distinct from the ZBA, as required by Code.
14. Notwithstanding the failure to notify the Building Department, the Building Inspector, William Sheehan, obtained actual notice of the application and appeared at the scheduled ZBA meeting on December 5, 2013.
15. The matter was heard at the December 5, 2013, meeting of the ZBA, at which time the applicant confirmed, in response to a direct question from the ZBA, that his application was filed in his capacity as private individual resident of Stony Point, and not in his official capacity as Town Engineer, stating: "I'm here as a resident and as a professional Engineer. Not as the Town Engineer. That's not why I am here as the Town Engineer.... I am the Town Engineer, but I am not here as the Town Engineer."
16. Building Inspector Sheehan appeared before the ZBA on December 5, 2013, and objected to the applicant's standing to pursue his appeal.
17. Given the jurisdictional nature of the concerns raised by Mr. Sheehan, this Board kept the matter open with a focus on deciding the standing issue prior to addressing the merits of the appeal, and scheduled the matter to be heard on the issue of standing at its next regularly scheduled meeting on December 19, 2013.
18. On December 14, 2013, applicant sent a letter to the ZBA asking that the application be amended to assert that applicant was proceeding not only in his private capacity of Town resident, but also in his capacity as Town Engineer.

19. On December 18, 2013, applicant submitted a letter to the ZBA addressing the issue of standing, asserting in summary that (1) renters have standing the same as owners, (2) he is personally an aggrieved party by virtue of the proximity of his residence to the VonHein property and the alleged possibility that an accident might occur causing vehicles to damage his person or property, and (3) that as Town Engineer, he is an "Officer" and automatically has standing pursuant to Town Law Sec. 267.
20. On December 19, 2013, the matter came on to be heard before the ZBA at which time applicant admitted that as Town Engineer, he has no jurisdiction or authority to enforce Art. VI, Sec. 215-23 C of the Stony Point Code at issue in the Appeal, and that his jurisdiction as "Code Enforcement Officer" is limited to issues of storm water pollution protection, sewers, illegal fill, grading, green infrastructure, etc.; he admitted that Art. VI, Sec. 215-23 C of the Stony Point Code is "not an engineering issue, unless the laws change."

CONCLUSIONS OF LAW

1. In Sun-Brite Car Wash v. Board of Zoning and Appeals of the Town of North Hempstead, 69 N.Y.2d 406 (1987), the New York State Court of Appeals cautioned against overly broad conveyance of standing, holding that "permitting everyone to seek review could work against the welfare of the community by proliferating litigation, especially at the instance of special interest groups, and by unduly delaying dispositions."
2. A Zoning Board of Appeals is a board of limited jurisdiction, and under Town Law § 267-a(4), an appeal may be taken only by a "person aggrieved, or by an officer, department, board or bureau of the town."
3. To be considered a "person aggrieved" under Town Law § 267-a(4), "one must have suffered damage different in kind and degree from the community generally." McCabe v. Minnicozzi, 227 A.D.2d 487 (2d Dep't 1996).
4. Although living in close proximity to the property in question gives rise to an "inference" of such injury, close proximity alone is not enough to confer standing. Zupa v. Paradise Point Ass'n Inc., 22 A.D.3d 843 (2d Dep't 2005).
5. The applicant herein lives across the street, but he identified no direct, non-speculative damage suffered by reason of the decision from which he has appealed, different in kind and degree from the community generally.
6. The applicant identified three prior alleged car accidents that he asserted gave rise to damage he has suffered by reason of Mr. Sheehan's decision. However, these are purely speculative and in any event do not convey standing. One prior incident the applicant identified involved a different intersection altogether, another incident he cites involved a unrelated incident when a car was struck by a passing vehicle while it was pulling out of its driveway with no connection to the foliage on the VonHein Property identified, and the last incident cited was unsupported by any police accident report and in any event did not involve any damage to nor even intrusion upon the applicant's property. The allegation that the accident may have been related to the foliage is also unsupported and speculative.
7. The alleged harm to the applicant is thus not only entirely remote, it is also purely speculative and in any event is of the type and kind of damage suffered by the public generally.
8. Accordingly, the applicant is not a person aggrieved and has no standing.
9. Applicant's requested amendment to assert that he is appealing also in his capacity as Town Engineer is also ineffective to provide him standing.
10. Pursuant to New York State Town Law § 20-5: "The term "officer" and/or "officers" whenever used in this chapter shall include the incumbents of the offices of supervisor, councilman, town clerk, justice of the peace, superintendent of highways, assessor, receiver of taxes and assessments and collector, or any of them."
11. Applicant, as the Town Engineer, is not an "Officer" as defined in Town Law § 20-5 or 267-a(4), as he is not "supervisor, councilman, town clerk, justice of the peace, superintendent of highways, assessor, receiver of taxes and assessments or collector".
12. As Town Engineer, he is therefore not an "officer, department, board or bureau of the town."
13. Accordingly, he is not provided standing on his Appeal by reason of his status as Town Engineer.
14. His request to amend his application to assert his capacity as Town Engineer is therefore denied.
15. In the alternative, even were the amendment granted and even if the Town Engineer were to be considered an "officer" for purposes of Town Law 267(4), the Board concludes in any event that such amendment does not provide standing to the applicant herein under these circumstances.

16. Mere status as a town "officer" is itself not enough to confer standing. The appeal authorized by the Town Law to a Zoning Board of Appeals "contemplates the existence of a controversy regarding the decision to be reviewed and that the appealing party must have a real interest, as an aggrieved party or as a town officer, in having some claimed error in the decision reviewed and corrected." Gaylord Disposal Service, Inc. v. Zoning Bd. of Appeals, 175 A.D.2d 543 (3d Dep't 1991).
17. It is undisputed that applicant, as the Town Engineer, has no jurisdiction, authority, or interest in the enforcement of the Zoning Code section at issue herein. Indeed, the absence of his jurisdiction or authority over, or interest in the enforcement of, this code section is consistent with the fact that the applicant did not and could not charge the VonHeins with a violation of that section; applicant was instead limited to reporting same as private resident to the Building Department in the first place, which has sole jurisdiction over the enforcement of that section of the Code.
18. To provide the Town Engineer standing herein would effectively expand his duties and jurisdiction beyond that conferred upon him by the Stony Point Code, something this Board is not empowered to do.

NOW, THEREFORE, BE IT RESOLVED, that the Appeal No. 13-13 of Kevin Maher is hereby dismissed as the Applicant lacks standing.

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

Chairman Wright: The last item on agenda is the minutes of January 16, 2014.

*****MOTION:** Mr. Fox made a motion to accept the minutes of January 16, 2014; seconded by Mr. Porath. Hearing all in favor; the motion was carried.

*****MOTION:** Mr. Vasti made a motion to adjourn the meeting of February 6, 2014; seconded by Mr. Casscles. Hearing all in favor; the motion was carried.

Respectfully submitted,

Kathleen Kivlehan
Secretary
Zoning Board of Appeals