

**TOWN OF STONY POINT
Zoning Board of Appeals
Minutes February 7, 2013**

PRESENT:

Mr. Morlang
Mr. Keegan
Mr. Casscles
Mr. Vasti
Mr. Fox
Mr. Porath

ALSO PRESENT:

Dave MacCartney, Attorney

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 two items on the agenda – the first is the new application the request of Nancy Miranda.

Request of Nancy Miranda - App. #13-01

A variance from the requirements of the Town of Stony Point Zoning Code Chapter 215, Article V, Section 15A h.1-5; Less than required side setback: Required 15 feet provided 7.9 feet, located at 13 Heights Road, Stony Point, New York.

Section 15.04 Block 1 Lot 40 Zone RR

*****MOTION:** Mr. Casscles made a motion to place Application #13-01 on the March 7, 2013, agenda for a Public Hearing; seconded by Mr. Vasti. Hearing all in favor; the motion was carried.

Chairman Wright: A site visit will be the last Sunday in February, February 24, 2013.

Chairman Wright: The next item on the agenda is the decision for the request of Daniel Mucciolo.

Request of Daniel Mucciolo – App. #12-10

A variance from the requirements of the Town of Stony Point Zoning Code Chapter 215, Article VI, Section 24C, installing a fence over 4 feet; required 6 feet provided 7.3 feet; located at 23 Washburns Lane, Stony Point, New York.

Section 20.11 Block 2 Lot 3

*****MOTION:** Chairman Wright offered the following resolution; seconded by Mr. Fox.

In the Matter of Application #12-10, of Daniel Mucciolo for a variance from the requirements of Chapter 215, Article VI, Section 24C of the Stony Point Zoning Code, to permit the construction, maintenance and use of a fence as set forth in the application and accompanying materials on the premises located at 23 Washburns Lane in the Town of Stony Point, designated on the Tax Map as Section 20.11, Block 2, Lot 3.

The premises which are the subject of this application are located on Washburn's Lane in an RR Zoning District.

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

Application; Violation Notice dated October 23, 2012; Building Inspector's letter dated November 13, 2012; undated letter from applicant attached to application; photographs submitted at public hearing; survey with notations.

Additionally, members of the Zoning Board of Appeals personally visited the applicant's property and viewed it and the neighboring properties on December 30, 2012.

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

WHEREAS, a public hearing was held on January 3, 2013 and the testimony of the following persons was considered; Applicant; Gary Smay; Domenick Colleluore.

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

The applicant is the owner of the subject parcel. He has installed a fence adjacent to his driveway in between his property and that of his adjoining neighbor which violates the code in that it is 7.3 feet high. The applicant installed a six-foot fence and then also added a decorative lattice on top approximately an additional one foot high, which he claims he put in for safety, to prevent children from climbing over the fence and getting to the backyard pool.

One neighbor opposed the application and one supported it.

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

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

Yes, as the excessive height of the fence is contrary to existing conditions in the neighborhood.

(2) "whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance":

The applicant admitted he did not need the extra foot for privacy concerns or aesthetics, but, rather, security for the backyard pool. The applicant admitted that it was possible to provide security with a fence around the pool itself rather than by adding a foot to the fence in this location next to the driveway. Further, the Board finds that the extra foot on top of the fence in this location provides little to no benefit in regard to security in any event.

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

The variance sought is substantial given the nature and type of fence, and its location.

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

There was testimony concerning the construction of the fence being such that it will come apart in high winds as it has already done so at least once.

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

The alleged difficulty was self-created by the applicants’ desire place a fence of a height and in a location prohibited by the Code, and in fact the applicant installed the fence prior to applying for any permit or seeking a variance and only now seeks the variance after he was issued a violation.

NOW, THEREFORE, BE IT RESOLVED, that the application for a variance from the requirements of Chapter 215, Article VI, Section 24C of the Stony Point Zoning Code is hereby denied.

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

Chairman Wright: The other item on the agenda is the acceptance of the minutes of January 7, 2013.

*****MOTION:** Mr. Vasti made a motion to accept the minutes of January 7, 2013,, seconded by Mr. Casscles. Hearing all in favor; the motion was carried.

*****MOTION:** Mr. Vasti made a motion to adjourn the meeting of February 7, 2013; seconded by Mr. Morlang. Hearing all in favor; the motion was carried.

Respectfully submitted,

**Mary Pagano and transcribed by Kathleen Kivlehan
Secretary
Zoning Board of Appeals**