

**TOWN OF STONY POINT  
Zoning Board of Appeals  
Minutes February 20, 2014**

**PRESENT:**

Mr. Anginoli  
Mr. Keegan  
Mr. Casscles (absent)  
Mr. Vasti (absent)  
Mr. Fox  
Mr. Porath

**ALSO PRESENT:**

Steve Honan, 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.

So we have only one item on the agenda tonight and that’s the discussion for the request of Yummy’s 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 just wanted to bring this up for discussion. We had the Public Hearing and closed that, but I just want to get a sense as to where the Board is so we can kind of talk to our attorney and give him a sense as to how we might want to handle the discussion and ourselves – a decision and ourselves, kind of sense where we are. If there are any other facts that we want to discuss about this sign because it seemed to me there were still some questions we had internally about that so I wanted to open it up for discussion on that one. Our attorney isn’t here, so if we need to go into Executive Session we are going to have to wait for him to show up. In the meantime, I think we could probably bring it up for a discussion.

What I got out of the talk we had so far and with Mr. Sheehan’s points were is that it doesn’t seem as though the overall - the sign, meaning all the infrastructure on which the signage exists, the canopy itself, that doesn’t seem to be the part that is violated. What’s violated is the signage on top of that canopy and my thinking is that – well the canopy is okay and it probably still needs to be inspected. The signage is still somewhat larger then what the Town Code calls for and I’m not so sure that we have to say...a couple of things, one of them is I don’t know...because the discussions I’ve heard so far is that well Bill Sheehan kind of said you know the laws are probably out of date and it seemed to be there is some discussion around that if the Building Inspector says it is out of date maybe we should just go ahead and grant the variance. But, my thinking is that it’s not really the Zoning Board’s position to, even if the Building Inspector says “hey it’s kind of out-of-date” I don’t know that’s it our scope to say, “yes, it’s no good. Let’s kind of overrule it”. I think ours is to say – here’s the statute. Here’s what we’ve got and it either conforms or it doesn’t and unless there is some like unique circumstances for us I don’t really have the overall right to just say yes, it’s old. They should amend it so we will just go ahead and grant the variance. That is what I was picking up out of last week’s discussion.

**Mr. Fox:** I think a lot of these come across so we can grant relief where we see it can be fit. The applicant can benefit from it and not go against what the Codes are; totally to ignore them. My feelings is that canopy is going to exist either way, whether there is lettering on it or not. The lettering obviously – once they added the advertisement to it that's where it doubles from the permitted 40 to 80. I don't think the canopy really has anything to do with it. It's just the lettering on there. So that will exist either way; that canopy.

**Chairman Wright:** My thinking is that if we say "yes", the canopy is there so we deal with it and then let's say we granted the variance, I mean at that point what would prevent that from being a precedent that everybody could go ahead then and use the same thing – it's up there and now I've got the signage and...

**Mr. Keegan:** Well because every case is predicated on its own merits. There is no such thing as setting a precedent. We've been down this road many, many times. My feeling is, from Mr. Sheehan's testimony, that actually even though it's one sign because of the separation in between the lettering and everything else like that, now it manifests itself into two signs when actually it is one sign. I think it's a "little picayune" as far as I'm concerned. I see that the purpose of this Board providing some relief to a situation that you know necessarily wasn't understood by the applicant. Let's take into consideration, first of all, I don't think he speaks English and if he does it is limited. Here we have a situation where he went into a contract with the company thinking that this company would do everything that was applicable in terms of putting this sign up in the mall. Not being aware of that it was his responsibility because ultimately, I've talked to two people about this, and they say ultimately it is his responsibility; legally. But, come on I mean, here's a guy that is trying to make a living...

**Mr. Anginoli:** How much lettering would have to disappear to make this compliant?

**Mr. Fox:** Well he said its 40 square foot is the permitted and he is up to 80. So it is half the sign roughly; if you think about it.

**Mr. Keegan:** Well part of that sign goes around the side of the building.

**Mr. Fox:** That's not included.

**Mr. Anginoli:** That's not included.

**Chairman Wright:** So there's actually two violations. There are two signs facing 9W which is the flat part and the (inaudible).

**Mr. Fox:** Like Eddie was saying because of the intermission in them I think?

**Mr. Keegan:** Right – the separation between the lettering. Which I thought was (inaudible).

**Mr. Porath:** If you read the minutes and he reiterated, he said that if there was one continuance message the violation would go away except it would have been a little bit...maybe it would be too many letters. It still would have been a violation...

**Mr. Anginoli:** What makes it not a continuance message?

**Mr. Keegan:** There's a separation.

**Mr. Anginoli:** What separation?

**Mr. Porath:** It says Yummy's and take-out.

**Mr. Keegan:** It's on the east side of the door.

**Mr. Anginoli:** I looked at that sign a dozen times and there is not very much space between each group of lettering. I mean you have to include the Chinese lettering as well; so when he mentioned that, that made no sense to me when I went and looked at it. I am saying where is there this monstrous break between the letters. I think personally the lettering is very flowing around the entire sign. You can't tell him to change the lettering because it's half his sign.

**Chairman Wright:** But, I think one of the assumptions we are making is that the only way to remediate it would be to replace the canopy and I don't think you have to. I think there might be ways, and I don't have the expertise in the area, but I don't think the only remediation is to change the whole sign. There may be ways you can remediate the sign the way it is just by blending the colors into the background.

**Mr. Porath:** I think, in my point, I think a couple of points come to mind. One, the fact that they did not dispute at all that a mistake had been made. So fine, we got that. From a financial penalty, we are concerned that we are setting precedent. Well the fact is he is already experiencing a financial penalty. Even if we give the variance with no strings attached, he's had to pay an attorney; he's had to go through this process. I don't think we've...he's kind of making, I'm sure this won't happen again; in that regard.

The fact that Bill Sheehan says that the Code is outdated, I agree with your thinking that it's not our place to rewrite the Code, but I think there's been enough question that says is this Code falling into a grey enough area where it doesn't make sense and is this sign out of character with the rest of the community. But, the overriding factor to me, and I know it's probably I'm inclined because of what I do for a living in economic development, but I would say I don't think, today as we stand now, the Town should send any anti-business message. That doesn't mean business gets "carte blanche". We know businesses have a long history of pushing envelopes that you can go, but in this case given the fact that this is not offensive we should encourage businesses and I think if he benefits nothing more from the timing that we should do everything we can to make sure that this is a business friendly environment, within reason, that we should pursue that and if quite frankly if the worse problem we have is businesses are opening and looking to put signs that are out of Code that's a good problem to have.

**Chairman Wright:** I agree with your logic, but what bothers me, and the thing I am most stuck with is, that's beyond the scope of the Zoning Board. It's not up to the Zoning Board to say "It is really outdated" and I agree with you. We don't want to send negative things. But, I don't know if that's our charter.

**Mr. Fox:** How do we come across to the point where we decide whether we are going to give relief or not? We have to go outside that place.

**(inaudible - too many Board members talking)**

**Chairman Wright:** Why and that's the questions I'm asking – what's unique about your business? If there was something unique about his business to say...and they have to make a case. I can't make the case for them. They have to make the case. First of all it wasn't self-imposed. I didn't do it. Here's the unique...that's the whole thing because the uniqueness that tells you that it's not a precedent. If you don't have anything that is unique, then you are, in my mind, you are setting a precedent. If they can distinguish, so if for instance there was one that we had one time where somebody had, or I heard a case, where somebody wanted the ratios of the houses but they were handicapped. Because they are handicapped that gave them the unique circumstance to say this is why we could grant the variance. I didn't get anything that I asked. What's unique about this thing that is different than everybody else there so we can go ahead. If came with something that is unique, I would say okay then I can find room to grant the variance, but I didn't see anything that was unique other then I contracted the guy, he didn't check with the local Codes and now I am stuck with a \$3,100.00 bill and leaving us with the impression that the only way to remediate that is pay another \$3,100.00, which I don't think is the case either.

**Mr. Porath:** And maybe, not to start being argumentative about this, just to give a countering point of view, I mean you could apply that unique take-out element to almost everything we decide on and I don't know if we could always say well your deck is 6 inches too close to the property line that's unique. And, yet if it's not offensive and there are other mitigating factors...

**Chairman Wright:** But, even on that example, so this isn't unique and it's fairly substantial. It is twice the size it's allowed.

**Mr. Porath:** In my mind what makes it unique is in many cases due to circumstances simply beyond their control of property being taken that there is no recourse for any other signage for that business to advertise their presence it is, we all know the place, we all go by there all the time. There is no room for anything else. To me that would lend an element of uniqueness that says this is the only advertising mechanism. This is a Chinese food take-out place that relies on drive-by recognition. Is it that impactful? I think if we do the questions, you are right, if we go through the five questions quite frankly self-imposed, absolutely. It's going to be a split decision of those five.

**Chairman Wright:** That's an interesting angle though and I didn't really think about that. But, if that's the only way, and then the question I still have on the angle of uniqueness, but it's still twice the size. I think we can circumvent an argument on uniqueness there. See, so now I would say, just for an example, I would say if he was 100 feet off the road and there are trees all over the place that were owned by the State and he had an 80 foot sign, I would say "yes" because you can't see it. That would be unique. It's bigger, but because he needs the visibility because he is back there and State property prevents him from being there, but he is kind of on the road already, so the size in there I am still stuck on, but I think you are making too many roads on the uniqueness subject.

**Mr. Keegan:** If we go down the road a little bit, and we go to that strip mall then you have that sign out in the front that acknowledges every business that's inside of that strip mall...

**Mr. Fox:** Colonial Plaza – that's what it is?

**Mr. Keegan:** And also Colonial Plaza. Colonial Plaza is down by me. It is across from Walgreen's. No, I am not talking about that. I am talking about, which also has a sign...

**Mr. Porath:** Where Chase and...

**Mr. Keegan:** Where Chase and the gym and that is, they have the benefit of having a sign because they have the property there.

**Mr. Fox:** Right, street sign in the front.

**Mr. Keegan:** The uniqueness of this is the property itself. It doesn't provide for anything like that. And I agree with Steve that he has a limited exposure to get out to the public. I don't think he...let me make this point, this is the point I really wanted to make, let us say he came in here and he said I would like to have a variance to put this sign up? It's not up yet and made the argument that well I don't have the benefit of any other advertising or anything else like that. This is my one shot to get this done. How would we feel about that? Would you feel inclined to give him that variance so that he would have a legitimate shot because the uniqueness of it is the property itself.

**Mr. Porath:** There is another element to it. When you look at that, when you say "oh, that's a big sign" are you really saying it's a big canopy. And, a canopy is not the violation; that's the irony of the point. Those letters are what is jarring. It's the canopy and the canopy is within Code.

**Mr. Anginoli:** That's exactly what I was thinking about.

**(inaudible – too many Board members talking)**

**Mr. Anginoli:** The whole thing makes no sense to me.

**Mr. Porath:** You can't erase the canopy. Just look at the letters. If you did, I don't think...

**Mr. Anginoli:** So if he took all the letters off, there would be no issue.

**Mr. Keegan:** Put smaller letters there.

**(inaudible – too many Board members talking)**

**Chairman Wright:** If you look at the one right next to it, the liquor, now they complied.

**Mr. Anginoli:** It's only one word.

**Chairman Wright:** It's a canopy, but they've kept the signage to within the Code.

**Mr. Keegan:** Is there anybody in that liquor store now?

**Mr. Fox:** No, it's vacant.

**Mr. Keegan:** When the new one moves in, I'm sure they are going to...

**Chairman Wright:** If you want to see what's compliant – so you've got non-compliant and you got compliant. You've got liquor...

**Mr. Anginoli:** Is that the original canopy on the liquor store from when...

**Mr. Porath:** I think that's been there for a while. Maybe not original, but that's been there for quite a while.

**Chairman Wright:** It's been there for a while. But, that's compliant. The second you say that that's sign that he has there is compliant then the liquor store can say they have exactly the same circumstances they can do exactly the same thing, let's say that that's sign company and the guy across the street on 9W goes "hey, he's my competitor. Look at the size of his sign and now look at me." So now I need it. So now you've got a proliferation of signs going down 9W.

**(inaudible – too many Board members talking)**

**Mr. Porath:** But, that's not the worse problem. If businesses are investing in themselves because they see that it is an investment. Now that's really getting out of the scope, and I realize that. But, I think that is a mitigating factor. Who is being hurt by this and I don't think there is anybody.

**Mr. Keegan:** But, look at the Shell Station on the other side of the bridge. The whole place is an advertisement.

**Mr. Fox:** What Ed said is true, too. You have a lot of the other shopping centers, strip malls have signs out by the street and they have signs above it; so is that a violation because they have two signs?

**Mr. Keegan:** Look at Shop Rite...

**Mr. Anginoli:** Their signs are much more intrusive then...

**Mr. Porath:** They had different configurations and I guess it is a little "apples and oranges" there. They have the ability to do other signage and I think that goes back to he has no other opportunity. That's it. That's his one shot. You better see the words "Yummy" when you are driving by.

**Chairman Wright:** So then, let's say the liquor store sells and they come in for a variance would you be inclined – just by what we did here, you have to give them a variance.

**Mr. Keegan:** I don't really have a problem with that because I don't think that sign is obtrusive. I think the sign is in keeping with what's in the neighborhood, the size of the property, the fact that it is a drive-by. It's not as if you park there at a light and looking...you are driving by this. To have it a little bigger and...

**Chairman Wright:** So let's say now John Ardiri, across the street in his barber shop, says I want to drive more business. He puts up a great big sign on his place, so would we approve that?

**Mr. Porath:** Then we would ask the same questions. John, do you have anywhere else you can put signage that wouldn't be...do you have a realistic alternative and if his answer was "no"...

**Mr. Fox:** They don't have any frontage. They don't have any frontage to the street. They don't have it in front.

**Chairman Wright:** You would grant the variance for him?

**Mr. Porath:** Probably would and I realize where you are going with this and you are right; it starts to set, but I am trying – where does this become a detriment problem to the Town.

**Chairman Wright:** I don't think it's the detriment problem to the Town I think what is the scope of the Zoning Board's authority and I think we start to get past that unless we can...in my mind...

**Mr. Anginoli:** Any variance that you grant is setting a precedent.

**Mr. Keegan:** It goes outside the scope of what we do.

**Chairman Wright:** They are unique. That's my point. If you can make it unique enough where he's...or you can say you know, you or maybe the guy next to you are the only guy who fit this pattern. Then I don't think we...then I think we are falling within the scope of authority of the Zoning Board. I think the second...you can't differentiate him from the guy next to him, to the guy across the street, and the guy across the street down the road from him. But, then I think we've got him beyond the scope of the Zoning Board.

**Mr. Fox:** These are unique situations. These were existing buildings and the road was widened on. That wasn't his choice. Just that's the way things turned out.

**Mr. Anginoli:** But, the canopy is not in question.

**Mr. Fox:** The canopy is not in question.

**Chairman Wright:** But, is this something but really belongs with the Town Council or with the Zoning Board?

**Mr. Keegan:** We could send a letter to the Town Board and recommend that they change the signage, but the other thing that really irks me is that we had Walgreen's; not only had sign variances as to the scope of the signs, but how many signs. The same thing with CVS, and way way out of line was Shop Rite. Shop Rite was off the charts and I still...I live down there. I have neighbors still complaining to me about the Shop Rite sign being on after 12:00.

**Mr. Porath:** Was there a variance...

**Mr. Keegan:** I went and talked to Pete about it.

**Mr. Porath:** Was there a variance given to Shop Rite based on that sign?

**Mr. Keegan:** Absolutely.

**Mr. Porath:** So my point and I think this is to re-enforce it, if the necessity of having Shop Rite...I'm sure not even being here, I'm sure they drew some line in the sand and said they needed to have it.

**Mr. Keegan:** Well they were off of 9W. That was one of the mitigating factors.

**Mr. Porath:** (inaudible) and their decision was made that there were unique circumstances that justified and it was good for the Town...

**Mr. Keegan:** And they got everything they wanted; almost because not everything.

**(inaudible – too many Board members talking)**

**Mr. Porath:** Absolutely, but I think in a different way...

**Mr. Keegan:** I don't have a problem with that.

**Mr. Porath:** The small business and theory has no other alternative and I'm not trying to hang my hat, but (inaudible).

**(inaudible – too many Board members talking)**

**Mr. Porath:** I don't have an issue with concept of the sign, but I think your point is we need to be careful and not (inaudible) and maybe that's what we hang it on that there is a unique, due to circumstances beyond our control the State took their property...there's no other, no venue for him to advertise and maybe that's what we hang our hat on. You know what, if John Ardri across the street says I want to do this, then he would have to come up with a rationale that says the same thing. But, then again he would have to make the investment and he would have to want to do this.

**Chairman Wright:** So let me ask one other thing. So what if there is a way for him to remediate. Let's just suppose, and that's where I want to get your thinking on this, let's suppose that we said no variance and one part of the sign, he has to blend that one part of the sign so its yellow with the rest of it, there's a little cost option and he complied. What he's got there, cover up one piece of the sign – would that be an unacceptable alternative for this Board to consider?

**Mr. Porath:** I personally would say...I'd feel a little bad about doing that. I feel like we were unduly punishing him. I know what you are saying is cause it makes the issue, it makes the precedent issue go away, it makes this a "non-matter" at that point, but I think I am looking at it and saying the guy spent \$3,100.00. The guy spent, no offense Ralph, but he's paying an attorney, he is going through all the measures to try and fix this then to have him find out the sign is not by design; I don't know I feel like that's...

**Mr. Fox:** First of all, how many Chinese food places you know that don't have take-out? Isn't that the same?

**Chairman Wright:** Yes.

**Mr. Fox:** So you really don't need to advertise that; does he?

**Chairman Wright:** So let's go back to Mr. Keegan's proposal at the time where he said "let's say he came to us initially and wanted to do this". I think one of the things we would of said, if this was up front, we would of probably said to him we see your sign, but you know what you need that sign off to the right, if you can eliminate that you can put the big canopy up there, put your writing up there to be in compliance and we probably, I suspect under that scenario, we might very well been able to find a milligram where we might not of granted the variance for all the signage in Town. So the difference would be between, I did it before the fact or said I did it after the fact.

**Mr. Porath:** It would have been easier if he come before it. Again, I probably would have been inclined to approve it. If we had asked him, he could of minimally tweaked the sign and there would have been no cost associated with it. I guess it could have been easier; it could have been a "non-issue" completely, but I think I would have been inclined to approve it because again I am very conscience and again I know this is outside the scope of this Board and we should be promoting business sensitive friendly environment and if we have to tighten...if we reach a point where we need to tighten the reins up down the road...

**Chairman Wright:** Just one of the things I think we need to be concerned with – because if we try to tighten the reins down the road very likely somebody could have a much stronger position on an Article 78.

**Mr. Porath:** But, I think we could, I think we can...

**Mr. Fox:** Justify it.

**Mr. Porath:** We can rationalize that this was unique enough. At least there's a sliver of uniqueness to this and that sliver is there is no sidewalk or no building to put a sign up; if we need to hang our hat on something. I just hate to see...I think it's being a small business person that's probably financially it's a struggle enough. I would hate to see this cost this guy anything more and know that is not your intent.

**Chairman Wright:** I don't want to see him fall. I would love to sit there and say "yep, let's just give it to him", but what I don't want to do is put us in a position where we are saying "yes" to everybody and putting ourselves in more positions to get Article 78 challenges which are going to be more expensive to all of Town.

**Mr. Fox:** You have to identify the uniqueness of it.

**Chairman Wright:** Right.

**Mr. Fox:** And you get away from that.

**Mr. Keegan:** I think we did though because of the nature of the property. And you talk about leaving yourself open, when we gave that variance to put the recreational vehicle in the driveway, I mean my God and somebody came in right after that, except that they didn't own the property that they were storing the vehicle on; but, I thought we left ourselves open. But, there's always the fact, Steve am I right, there's always the merit of the individual cases is what we are dealing with.

**Mr. Honan:** You are right. No property is unique. So what you try to do if you are going to make an exception; identify the unique factor about this particular piece of property, this particular application, and it's kind of a rare thing to do and have another piece of property that is going to have precisely the same type of thing.

**Mr. Keegan:** Just making another point – one more point. Is that in the shopping center next to this property, the gymnasium and everything, there is a Chinese restaurant in there. It has the benefit of the sign out in front.

**Mr. Fox:** Out by the street and on the façade as well.

**Mr. Keegan:** I am willing to bet he's signage exceeds the signage that is on the Yummy thing. I'm talking about in the scope of things.

**Mr. Porath:** I am sure in the square footage, but he doesn't break Code because he's got it over the course of two different signs.

**Chairman Wright:** That's actually a good point. What if he turns around and says "you know he is closer..." I would actually make this argument if I was the owner of that Chinese restaurant, I would make this argument. He's already close to the road. He is prominent already because he is close to the road and now he's got a greater competitive advantage because now he's got more signage to attract people and he is taking away business from it.

**Mr. Fox:** You have two signs though. He's got one on the (inaudible) and one on the façade of his building.

**Chairman Wright:** Let me ask you a question – if you are driving down 9W and you're thinking I want to go to a Chinese restaurant are you more likely to find "Yummy's" or the guy in the shopping center?

**Mr. Keegan:** It depends on how far you drive.

**Mr. Keegan:** I think the guy in the thing because there is much more parking.

**(inaudible – too many Board members talking)**

**Chairman Wright:** From a signage prospective, I'm driving down 9W, and I don't even know the area...

**Mr. Keegan:** That's what I'm talking about. We are talking about the sign here.

**Mr. Fox:** The shopping center you are pulling more likely to pull into a shopping center then...

**Chairman Wright:** Why because there is a Chinese place there or because...

**Mr. Fox:** You may find something in there you like. There is a pizza place...

**Mr. Keegan:** Or you want to kill more than one bird.

**Mr. Porath:** I guess the argument would be, to be a "devil's advocate" the owner of "China Wok" says that is an unfair competitive advantage, now I want a big sign, too. Well I would say that you have to prove that you are at an unfair competitive advantage that the sign on the street, the sign on your building is somehow not...you know what I mean.

**Mr. Keegan:** The signs have got to be in conformity with the rest of the signs in that shopping center.

**Mr. Porath:** And he doesn't have the arbitrary decision to do what he wants with this sign, because that is owned by another third party. Granted I think in my gut it tells me this is not an easy "black and white thing", but if I had to say over the scale of looking at it I'm tilting towards "yes, let's give him the variance". Not a "slam dunk", but yea I think given the circumstances – that's my gut tells me.

**Chairman Wright:** I think if we want we can probably go into Executive Session and speak to our attorney about some of the matters related to this particular case and then we will come out of there and adjourn the meeting.



**Mr. Keegan:** Can I ask a question, also? Is this just limited to this Chinese restaurant or can we discuss the Bush case, too?

**Chairman Wright:** No, Bush case is not on the agenda.

**Mr. Keegan:** Okay.

**\*\*\*MOTION:** Mr. Keegan made a motion at 7:30 PM to go into Executive Session, pending litigation; seconded by Mr. Fox. Hearing all in favor; the motion was carried.

**\*\*\*MOTION:** Mr. Fox made a motion at 8:12 PM to reconvene to regular Zoning Board of Appeals meeting; seconded by Mr. Keegan. Hearing all in favor; the motion was carried.

**Chairman Wright:** So I think that is all the items we had on the agenda so unless anybody has anything further they would like to bring up?

**Mr. Fox:** Just the minutes?

**Mr. Keegan:** Just the minutes?

**Chairman Wright:** We just got the minutes now, so we probably want to wait until the next meeting so we can get a chance to read them and then we will vote on them at the next meeting.

**\*\*\*MOTION:** Mr. Keegan made a motion to adjourn the meeting of February 20, 2014; seconded by Mr. Porath. Hearing all in favor; the motion was carried.

Respectfully submitted,

Kathleen Kivlehan  
Secretary  
Zoning Board of Appeals