

**TOWN OF STONY POINT
Zoning Board of Appeals
Minutes May 16, 2013**

PRESENT:

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

ALSO PRESENT:

William Sheehan, Building Inspector
Steve Honan, Attorney
Joseph McKay, Attorney
Patricia Puleo, Court Reporter
Katherine Zalantis, Attorney for applicant

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.

Welcome everybody we have three items on the agenda tonight – two decisions and the continuance of a Public Hearing. Our first item is the request of Anthony and Joseph DePalma.

Request of Anthony and Joseph DePalma – App. #13-05

A variance from the requirements of the Town of Stony Point Zoning Code Chapter 215, Article V, Section h.1-6 Less than required rear setback; required 35 feet provided 6 feet, located at 12 Laurel Drive, Stony Point, New York, for the construction of a deck.

Section 20.06 Block 2 Lot 29

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

In the Matter of Application #13-05 of Anthony and Joseph DePalma for a variance from the requirements of the Town of Stony Point Zoning Code, Chapter 215, Article V, Section h.1-6, less than required rear setback, required 35 feet provided 6 feet for the construction, maintenance and use of a rear deck on premises located at 12 Laurel Drive, Stony Point, New York designated on the Tax Map as Section 20.06, Block 2, Lot 29.

The premises which are the subject of this application are located in an R1 Zoning District.

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

Application; Building Inspector's denial letter dated 4/12/13; Survey and Plans.

Additionally, members of the Zoning Board of Appeals personally visited the applicant's property and viewed it and the neighboring properties on April 28, 2013.

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 May 2, 2013, and the testimony of the following persons was duly considered: Joseph DePalma and William Sheehan.

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

The applicants are the owners of the subject parcel which contains a single family dwelling. The house sits on an unusually shaped lot which provides significant rear yard setback on the southwesterly portion of the backyard, but a shortened rear yard setback on the northeasterly side. The applicant wishes to replace an existing deck next to the house (which he calls the "upper deck") and to also expand a new "lower deck" into the rear yard. The applicant has plenty of room for the "lower deck" on the rear yard setback on the southwesterly part of the property, but because of the unusual shape of the lot, the proposed expansion of the lower deck would come to 6 feet of the rear property line on that part of the property. Per the testimony of the Building Inspector, if the deck were under 1 foot in height, no variance would be required because it would be considered a patio which only requires 5 feet in rear yard setback. However, because the patio is proposed to be 2 to 3 feet high, a variance is required because a 35 foot setback is required. The deck will be an open-air deck and will not be enclosed.

No objections to the variance were received.

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

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

There is no evidence presented that the proposed variance would produce any undesirable change in the character of the neighborhood or a detriment to any nearby properties, on the condition that the deck shall not be enclosed, but instead shall be an open-air deck limited to the dimensions indicated in the application as set forth above, and that the "lower deck" shall be limited in height to a maximum of 3 feet.

(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 deck could be made smaller, but a rear setback variance would be required either way given the shape of the lot.

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

The variance is substantial in terms of feet, but this is mitigated by conditioning the grant of the variance on the deck being not enclosed and by requiring the height to be a maximum of 3 feet, since if it were under one foot high, no variance would be required at all.

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

There is no evidence before this Board of any adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

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

The alleged difficulty was self created but the shape of the lot is a mitigating factor.

NOW, THEREFORE, BE IT RESOLVED, that the application for a variance as set forth above for the construction, maintenance and use of an open air deck is hereby approved on the condition that the deck shall not be enclosed and shall be limited to the dimensions set forth in the application as recited above, and the lower deck shall be limited in height to a maximum of 3 feet, and the matter is remanded to the Building Inspector for further consideration in compliance with all other applicable laws, rules and regulations.

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

Chairman Wright: The next item on the agenda is the request of the Goldsmith Family Trust, Stuart.

Request of Goldsmith Family Trust, Stuart – App. #13-04

A variance from the requirements of the Town of Stony Point Zoning Code:

Chapter 215, Article IX, Section 215-52 B-2: Installing more than one sign on building; Permitted one sign installing 2 signs;

Chapter 215, Article IX, Section 215-52 B-3: Vertical height permitted 2.5 feet; provided 7.5 feet;

located at 150-176 South Liberty Drive, Stony Point, New York, for Aldi signs on building.

Section 20.04 Block 11 Lot 1 Zone BU

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

In the Matter of Application #13-04 of the Goldsmith Family Trust to grant the following variances from the requirements of the Town of Stony Point Zoning Code on property located at 44 South Liberty Drive, Stony Point, New York, designated on the Tax Map as Section 20.04, Block 11, Lot 1:

Chapter 215, Article IX, Section 215-52 B-2: Installing more than one sign on building; Permitted one sign installing 2 signs;

Chapter 215, Article IX, Section 215-52 B-3: Vertical height permitted 2.5 feet; provided 7.5 feet;

The premises which are the subject of this application are located at or near the intersection of South Liberty Drive/Route 9W and Filors Lane in a BU Zoning District.

The applicant was represented by Sean M. Dixon, Esq. and the following documents were placed into the record and duly considered:

Application; March 31, 2013 denial letter from Building Inspector; plans, renditions, and photos of site and proposal.

Additionally, members of the Zoning Board of Appeals personally visited the applicant's property and viewed it and the neighboring properties on or about April 28, 2013.

WHEREAS, the matter is a Type II Action pursuant to the New York State Environmental Quality Review Act; and

WHEREAS, a public hearing was held on May 2, 2013, at which time the testimony of the following persons was duly considered: Sean M. Dixon, Esq. and William Sheehan; and

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

The subject parcel is the site of a shopping center, and the variances sought herein are in regard to certain signage requested by a new tenant which plans to occupy and operate a portion of the space as a supermarket under the trade name "Aldi." The shopping center is located on a busy commercial corridor on South Liberty Drive, and the building is separated from the roadway by an expansive parking lot, providing considerable setback between the building and the roadway. As set forth in great detail in the plans and renderings submitted as part of the application, the applicant proposes to have one sign on the facade above the center of the new supermarket to read, horizontally, "FOOD MARKET" and also proposes a second sign on the southern of two "pillars" on the facade, to display the trade name "ALDI." The signs are to be rear-illuminated without flashing of any kind and the "Food Market" sign will consist of simple channel letters.

Variations are requested for these two signs because (a) only one sign is permitted on the facade, whereas two are requested, and (b) the "ALDI" sign is proposed to be 7.5 feet tall, whereas the code permits a maximum of 2.5 feet in height for a sign of this type and location.

The applicant points out that the nearby Shop Rite, CVS, and Walgreens all have more than one sign on their facades so permitting two signs here would not be out of character in the neighborhood or community, particularly given the significant setback from the roadway. The applicant also argues that the 7.5 foot height requested for the "ALDI" sign is required for visibility and effectiveness given the significant setback from South Liberty Drive together with the large amount of square footage that makes up the west elevation. The applicant also argues that the nearby Shop Rite has two circular signs which are similar in height to the requested "ALDI" sign.

No objection has been submitted to any of the variations requested.

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

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

There is no evidence presented that the proposed variations would produce any undesirable change in the character of the neighborhood or a detriment to any nearby properties, particularly given the existence of other commercial properties with similar signage in the same commercial corridor.

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

There is no evidence presented of any other feasible means to achieve the benefit sought.

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

The variations sought are not substantial given the large setback and size of the facade.

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

There is no evidence before this Board of any such potential adverse impacts.

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

The alleged difficulty was self-created.

NOW, THEREFORE, BE IT RESOLVED, that the application is hereby granted, upon compliance with the terms and conditions of this resolution, on the condition that the applicant does not deviate materially from the plans and renderings submitted and upon which the Board has relied in granting the variations requested, and on the condition that the applicant comply with all other applicable laws, rules and regulations, and the matter is remanded back to the Building Department for any and all further proceedings required in conformity with law.

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

Chairman Wright: So we've spent through our first two items, I am not sure that all of our counselors are present here. So we will jump ahead and accept the minutes of the meeting from May 2, 2013.

*****MOTION: Mr. Vasti made a motion to accept the minutes of May 2, 2013; seconded by Mr. Casscles. Hearing all in favor; the motion was carried.**

Chairman Wright: At this point we are waiting for Mr. McKay and Mr. Silverberg. I am sorry - a representative for Mr. Silverberg is here.

Mr. Honan: At this time, Mr. Honan excused himself as he is not representing the Town in the Town of Haverstraw matter.

Chairman Wright: At this point we will continue with the Public Hearing for the request of the Town of Haverstraw.

Request of Town of Haverstraw – App. #13-02

Interpretation and appeal of the Town of Stony Point Building Inspector’s decision in regards to permitted use, located at the east end of Holt Drive, 1800 feet and the east end of South Liberty Drive/Route 9W, (also known as Hudson River View Industrial Park Building D) (property), for the proposed gasification plant.

Section 20.02 Block 11 Lot 25 Zone RR

*****NOTE**: At this point, the minutes for the Town of Haverstraw were taken by the court reporter, Patricia Puleo.

Chairman Wright: Since there are no other comments, representations or discussion from the Board...

*****MOTION**: Mr. Casscles made a motion to adjourn the meeting of May 16, 2013; seconded by Mr. Keegan. Hearing all in favor; the motion was carried.

Respectfully submitted,

**Mary Pagano (took minutes of meeting) and
Kathleen Kivlehan (transcribed said minutes)
Secretary
Zoning Board of Appeals**