

**TOWN OF STONY POINT
Zoning Board of Appeals
Minutes July 17, 2014**

PRESENT:

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

ALSO PRESENT:

Steve Honan, Attorney
Dan Sullivan, Attorney
William Sheehan, Building Inspector

Chairman Wright

Chairman Wright: There are a few items on the agenda, but just real quick I've been absent for the last few sessions, for some personal reasons, and I want to particularly say "thank you" to all the Zoning Board staff, all the members of the Zoning Board here, partially Joe for standing in as the Chairman for the last few weeks. There's been a lot going on, so I just want to say "thank you" for all the support and I appreciate it.

On the agenda tonight, we have four (4) items on the agenda tonight. We have a decision for the request of Peter and Judy Cairo.

Request of Peter and Judy Cairo – App. #14-07

A variance from the requirements of the Town of Stony Point Zoning Code Chapter 215, Article V, Section 15Ah.1-6: Less than required rear setback, required 25 feet, provided 23 feet, for replacing and enlarging existing deck and landing, at 5 Cartwright Road, Stony Point, New York.

Section 20.05 Block 2 Lot 3 Zone R1

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

In the Matter of Application #14-07 of Judy and Peter Cairo for a variance from the requirements of the Town of Stony Point Zoning Code Chapter 215, Article V, Section 15Ah.1-6: Less than required rear setback, required 25 feet, provided 23 feet, for the construction, maintenance and use of a rear deck on premises located at 5 Cartwright Road, Stony Point, New York designated on the Tax Map as Section 20.05, Block 2, Lot 3.

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

The applicants represented themselves and the following documents were placed into the record and duly considered:

Application; Building Inspector's denial letter dated 6/10/14; Survey and Plans; letter from Roy Kinkead dated 6/24/14.

Additionally, members of the Zoning Board of Appeals personally visited the applicant's property and viewed it and the neighboring properties on June 29, 2014.

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 July 3, 2014, and the testimony of the following persons was duly considered: Judy and Peter Cairo.

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 applicants seek to replace an existing deck and accompanying stairs. The existing deck is 10 feet deep and provides insufficient room to safely and comfortably use a grill, so the applicants seek to replace the existing deck with one 12 feet deep. The proposed deck, however, extends 2 feet into the prohibited rear yard setback: 25 feet are required, but 23 feet are provided. Accordingly, the applicants are seeking a variance. The deck will be an open-air deck and will not be enclosed. No objections from any neighbors have been received and one next-door neighbor residing at 7 Cartwright Rd., Roy Kinhead, wrote to this Board confirming he has no objection to the variance sought.

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.

(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":

No evidence was presented of any feasible alternatives.

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

The variance is not substantial.

(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.

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 and plans submitted therewith, 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. Anginoli, absent; Mr. Keegan, yes; Mr. Casscles, yes; Mr. Vasti, yes; Mr. Fox, yes; Mr. Porath, yes; and Chairman Wright, abstain.

Chairman Wright: Next item on the agenda is the continued Public Hearing for the request of Matt Anderson.

Request of Matt Anderson – App. #14-06

A variance from the requirements of the Town of Stony Point Zoning Code Chapter 215, Article V, Section 15Ah.4-4: Less than required front yard/setback - required 25 feet, provided 14 feet; and Chapter 215, Article V, Section 15Ah.4-6: Less than required rear setback – required 25 feet, provided 20 feet, for a 2-family residence, located at 16 River Road, Stony Point, New York.

Section 21.09 Block 1 Lot 18 Zone RW

Chairman Wright: So we had...this is a continuation of a Public Hearing so I would ask if there is any members of the community that have any questions about or comments on the application and if you would, would you please come up and identify yourself.

**Eric Anderson
13 River Road
Grassy Point, New York**

Chairman Wright: “Do you swear the testimony you are about to give, is truthful?”

Mr. Anderson: Yes. I used to live at 16 River Road, where Donna and her three (3) boys were living. They lost their dad, she lost her husband; I lost a son. Hurricane Sandy came along and knocked their lives apart and now all of this they don’t need for a 5 foot setback. I think it is ridiculous. I don’t know what kind of people they are that are trying to do this, but they don’t belong here; that’s for sure. That’s all I can say. I’m sorry that there are people like this in this world.

Chairman Wright: Anybody from the Board have questions?

(no response)

Chairman Wright: Anybody else?

**George Stoll – builder
George Stoll Construction**

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

Mr. Stoll: Yes.

Mr. Casscles: I originally requested that George...when we did the site visit you said you were reconfiguring the stairs and I just want to make sure we have the right map.

Mr. Stoll: We are all good. My problem was that I happened to be on vacation and I sent John Perkins here and he couldn’t answer the questions that I can because he’s not physically building it. But, nothing was changing on that setback with the way the stairs were going back. There was a little bit of conversation, I guess, that we could of saved a little bit, but it really doesn’t happen. By the time we make the stairs 4 feet wide, enough to get a refrigerator up it, couches, we have to be able to swing the turn so both sets of stringers are 4 feet wide; so that’s why that base platform is 14 feet long to accommodate all those stairs. We really tried to...the amount of steps coming down, we really tried to limit them so that when we do the switch-back the only concern we have is when we come back to underneath of the deck we don’t hit our head. So it has to be far enough away so we have enough headroom to meet the Building Code.

So we will take all of that stuff into consideration when we are building the stairs.

Mr. Casscles: Can you also make it easier when you're parking and swinging the car around?

Mr. Stoll: There was also conversation, I guess, about cars in front of each other, but we also have the ability with this structure...we have 10 feet on each side of the house. We do have the ability to park alongside the house and I believe in conversations with Mr. Sheehan that doesn't create any issues as far on a zoning basis. They are allotted side yard parking down in that area. It's the front yard parking...I made it very, very clear, and I am sure in your documentation it's going to be very clear to the Andersons that there's no front yard parking in that area whatsoever. This way when it comes to enforcement time, like we had the conversation, it will be easily enforced.

Mr. Vasti: At the last meeting there were neighbors, I think it was the Brosnans that raised a concern over the setback of the house in terms that it was not in line with the other houses and that it would block their view. Was there any modification to bring the house further back? That would reduce the front setback variance, but it would increase the rear setback variance.

Mr. Stoll: What we did down there...the three (3) new houses; every house is in and out.

Mr. Vasti: Would you answer my question – yes or no?

Mr. Stoll: No.

Mr. Vasti: So you're not considering repositioning?

Mr. Stoll: No. The house is placed properly according to the survey and the lay of the land.

Mr. Vasti: Thank you.

Chairman Wright: Any questions for Mr. Stoll?

Mr. Honan: I have one question. You just indicated that you submitted an updated survey, site plan of the premises, there has been a letter received from County Planning and they indicated that they would like the survey to also reflect where the parking is going to be on the premises. Would that be a difficulty to add that to the plan?

Mr. Stoll: No, not at all.

Mr. Honan: They also indicated that they would like to have reflected on the plan that the people are not to back out onto the County highway, which is River Road. Would you be able to show some kind of a turn-around area on the plan in front to reflect that?

Mr. Stoll: Sure.

Mr. Honan: Thank you. Also, they indicated they also wanted to have the plan reflect the topography and elevations for the site to show that it is in the "100 year flood plan".

Mr. Stoll: That will happen. We've submitted that...that part of that application I believe goes to the Building Department with the new elevation certification and then part of that can be passed over to the County.

Mr. Honan: Okay.

Mr. Casscles: I think the parking part is to go through Bill, right?

Mr. Sheehan: Can I come up and explain?

Mr. Keegan: Excuse me...you indicated before that there were three (3) new houses and something back and forth...I didn't understand what that was?

Mr. Stoll: What we did...we did the Currans, who happen to be in the audience tonight, and we did the Casses on the end of the street and if you looked down the street, every house is in and out. There was no rhyme or reason to it whatsoever. So when we started with Tony Celantano, we happened to be "book ending" the street; one house on each end and we bought them in line with what was zoning and we are keeping every single house in-line going down the street now. So if you look down the street, it looks "dead perfect". We can't change what they did 100 years ago, but if they come in front of Billy again he can make them bring it in to current zoning and the setbacks will be correct. So I don't think that we want to keep on pushing back towards the swamp just to accommodate one house on the corner that was built that way. I just don't think that is the right move to make.

Mr. Vasti: Mr. Sheehan, this proposed....

Chairman Wright: So let me get Mr. Sheehan here. Thank you Mr. Stoll, we might need you again.

William Sheehan – Building Inspector

Chairman Wright: "Do you swear the testimony you are about to give, is truthful?"

Mr. Sheehan: Yes.

Mr. Vasti: Bill, this proposed dwelling, in terms of its bulk, with regard to the site, does it meet the bulk requirements; or does it exceed them? We don't have any indication on the survey what the bulk requirements are.

Mr. Sheehan: Are you talking lot area?

Mr. Vasti: Yes, lot area size relative to the size of the home.

Mr. Sheehan: Well actually the lot area exceeds a single family; it meets the requirements for a two-family. That's why a variance is not before you.

If I can give you a little history of what's happened, after Hurricane Sandy. After Hurricane Sandy came and obviously damaged numerous homes down there, I went to the Supervisor and said listen, when they started building these homes these area homes are going to have to go before the Zoning Board because not one of the homes down there meet present zoning. Basically, as George mentioned they are all pretty close to the road, but some are setback a little some closer and so forth.

I said in New York City and in a community out in Long Island, what they had done was they passed a...the Town Board or the City Council and Town Boards out on the Island, what they did was they passed a resolution that as long as the homes that were going to be rebuilt met the existing footprints that they were in or better, no variances would be required. That's why you see the homes going up now they haven't been before this Board.

What is unique to this property is that when the Town Board passed that resolution I made sure that they put in there that as long as whatever the house was being used for at that time, if it was a one-family, two-family or three-family, it stayed that way...or a three-family went to a two-family or less. This house was a one-family going to a two-family. So they are not under that blanket variance. If they were building the exact same house, same stairs, same deck and the same square footage as a single family, they would be building right now; they wouldn't be before the Zoning Board. The only reason here is because they are going from a one to a two. Which a two-family is a "use-by-right" down there; as long as you have 7,500 square feet; 25 fronts, 25 rear, 20 foot total sides.

So, to answer your question that is one of the reasons they are here and they do not need the lot area because they have more than 7,500 square feet; lot area, so they do have enough property.

As far as the flood elevation, again what the Town did, right now FEMA requires the flood plan at 8 foot elevation. Actually the new maps say 7 foot, but they use different data so I'm just going to say 8. The old maps use 29 data; the new maps use 38 data or whatever. So the elevation would have to be 8 foot plus 2 Building Code; they would have to be at elevation 10. What the Town Board did was, adopted the FEMA Advisory Maps, which are not FEMA maps yet, but eventually they will become the FEMA Maps which down there is elevation 14...actually 12 plus 2, 14. By the Town doing that they are going...actually 4 foot higher than what's actually required by FEMA today. The reason the Town Board did that was, we didn't want homes being built under FEMA requirements today; then three (3) years down the road, when the new maps become law under FEMA, they'd be under Flood Plain and then they would have to pay flood insurance; a high flood insurance. So we felt it was better to do it now than waiting for the Federal Government to do it. As far as the County's requirement about the Flood Plain they are above it by 4 feet. Actually by FEMA maps they are above it; they are actually going 17 feet, by FEMA maps they are above it by 9 feet; by Building Code they are above it by 7 feet. So that takes care of that.

As far as the parking or the turn-around or backing into River Road, before an application is processed in the Building Department, if they are on a County road they must get a County Highway permit. In this case they do have a County Highway permit. I think it was furnished to you tonight by the secretary.

Ms. Kivlehan: Yes.

Mr. Sheehan: So the County Highway are the ones that actually regulate backing into the street and so forth and they already received that permit. So I think that kind of takes care of the parking issue as far as the County is concerned.

As far as the view of the river, again if this was a single family house, it could be built right where it is. It's actually further away from River Road than the existing house was. What one of the major changes is going to be; it's going to be a lot higher. Even if it was a single story house, which was there before, we are raising it at elevation 17, which doesn't mean it's going to be 17 feet in the air, it means it's going to be 17 feet above sea level. That grade down there is probably about...

Mr. Stoll: Grade is 3 foot 7.

Mr. Sheehan: So you start at 3, 4 foot elevation so you are going to be 13 foot above grade. By the minimum they would have to be above grade is 14. So they would be 10 foot above grade at a minimum. They are going higher like the two end ones went higher so they could park underneath and have the head room and I did speak to George today about the switchback. I wrote an email that I thought that they could probably get 15 feet off the property line instead of the proposed 14. I was going off the old survey and so I kind of "guess-timated" it and George did mention about the...we will keep the least amount of stairs coming off the deck and that will bring the landing closer to the house, but I mentioned to him, as he knows, he is a contractor, we have to watch the headroom when you come back on the switchback we need at least 6 foot 8; and that's a minimum. You really want more than that if you are moving around refrigerators and so forth. So that's something I think we can do in the field; get enough headroom but try to keep it back as far as we can.

I think that pretty much answers everything, to my understanding, unless someone else has another question. Yes...

Mr. Keegan: Bill, I am very sensitive to the neighbors that live next door. I just want to make sure that the placement of this house, in your opinion, is correct and that's where it should be. I am very sensitive to the neighbors next door, but on the other hand I'm very sensitive to these people that want to build a house. I just want to make sure we are being fair to everybody involved.

Mr. Sheehan: What I've been doing down there is, actually this house...the stairs maybe not, but the house itself is further off the front yard than the existing house was. Again, obviously a lot higher though. There's a two-story elevated...a one-story elevated would probably block his view to the north; probably either way.

Mr. Keegan: So in your opinion, it's in the...

Mr. Sheehan: Yes, but what I've been doing is, as George said, the "book-ends" as he calls them, the end houses and there is a three-family going up right now that was a three-family. I had them push those homes back. They can actually be closer to the road than they already are because the existing houses were closer. Every time when they came in, we've sat and I've had them push them back as far as possible to make the street look nicer and so forth. So far it's worked. The three-family was a little tougher, but we did get it back as far as we could.

So to answer your question, yes we are trying to get them back which would be to the east, to the east, I am sorry to west as far as we can, but still we have some type of backyard. So far it's worked. I can't guarantee the other couple that are going to be coming if they are going to agree to it and so forth...hopefully George, so far he has two (2) of them; he doesn't have the three-family, and this is his third one, so he's been gracious enough to accommodate us on that, but...yeah, I think it's back as far as we can go with it.

Mr. Keegan: Thank you.

Chairman Wright: Any other questions?

(no response)

Chairman Wright: I just have one question...so you're prospective as the Building Inspector, you don't see any kind of deficiencies or any kinds of things that you want to remedy on this property and this building proposal at this point?

Mr. Sheehan: No, obviously, I hate to say this...if some people had their wish we probably, maybe the Town could of bought all the properties and got everybody some money down there and, but it is what it is and we have to deal with what we got down there. We are trying to make it as best as we can and so far it's actually coming out better than I thought it would on the piers and so forth.

Just to let you know, under the advisory maps which the Town has adopted, that used to be what they called a flood zone "A". Now it's in the flood zone "V". No foundations are allowed in the flood zone "V". So every house that's going to get elevated down there along the river, I know on Beach Road are going to be on piles which I wasn't the happiest with in the beginning but actually, like I say they are coming out pretty nice. I think it's the best we have and it's coming out pretty good.

Chairman Wright: Thank you. Any other questions for Mr. Sheehan?

(no response)

Mr. Fox: I have a question for Mr. Stoll. On the latest plans here George in reference to the driveways, where are they going to be.

Mr. Stoll: Directly...

(Mr. Stoll came up to the dais to explain to the Board members, by showing them on the plans, where the driveways are going to be.)

Mr. Fox: And how wide? Do you know how wide they are going to be as well?

Mr. Stoll: Yes, they are 11 feet. There is a column here and there is a column here.

Mr. Fox: On each corner?

Mr. Stoll: On each corner. There is one here, one here, one here and one here. So this proves, it allows you to come all the way through (inaudible). What we are going to do, we are going to pave here, like this, and make our turn-around like this so you could have (inaudible).

Mr. Fox: Will there be any grass in the front yard or anything like that?

Mr. Stoll: Besides the edging of the grass at the driveway entrance, we will do this; all of this will be grass.

Mr. Fox: I gotcha.

Mr. Stoll: All of this will be grass. Grass along here and this is already grass. This will all be grass.

Mr. Fox: My concern is obviously, you know, we have a lot of flooding issues down there and you know what the more asphalt you put down the more you are going to edge out to the County property.

Mr. Stoll: As far as I'm concerned, it's a County Issue.

Mr. Fox: What are we doing about keeping more property from flooding the edges of the County road?

Mr. Stoll: What are we doing to make sure that we don't push water on to the edge of the County...and that's going to be a swale in between the two (2) houses when they are all finished and the County is going to re-evaluate how they're going to manage their water on to all these new properties that are coming in with a new elevation. They know it's something that they have to deal with and we all know that timetable could be forever. But, you know we are doing our part.

Mr. Fox: Thank you.

Chairman Wright: Anybody else in the community have any questions or comments?

(no response)

Chairman Wright: Mr. Honan, I have a quick question...from your perspective do you feel as though any of the things you are aware from the County or the adjoining Towns, are there any issues that we still have open that we need before closing?

Mr. Honan: I don't think so. I think Mr. Sheehan indicated how the house is going to be constructed and it's going to meet all the requirements of the Town and also the FEMA requirements. The applicant, by his builder, has indicated that there will be a necessary change to the plans to have them reflect the driveway. Mr. Sheehan indicated that that requirement may not even be needed because we have in fact been produced the Highway Department permit that was issued by the Highway Department of the County on May 4, 2014, which basically indicates that they have looked at this application and they've approved it. So with

that being said the only issue, I think, that has not been addressed has been the referral to the Town of Haverstraw which was made note #5 in the County Planning letter, which I think can be overridden to the extent that it was even applicable. My question whether it is applicable under these circumstances because the applicant is not looking for a use variance they are looking for an area variance and it does go with what is being requested here. So even if we are to assume that the Town should of gotten some kind of...the Town of Haverstraw should of gotten some kind of in-put, I think under these circumstances it is not a required and it's not really a...this application doesn't have a concern...a Countywide concern. So I think under the circumstances I think we can proceed.

Chairman Wright: So I just want to kind of get a sense of the Board...so I think we are in a position where if there wasn't some kind of a vote tonight we are looking at September for it to move forward. Are there members of the Board who were...just don't think there is enough information to vote tonight, or do you think you have enough information to vote or we can go into Executive Session if we need to kind of "nail down" anything specific; legally in terms of putting in some of the right information, but is there any...

Mr. Vasti: In my opinion, my concern is do we have a resolution prepared? Do we Counselor at this time?

Mr. Honan: We have a resolution partially prepared at this time.

Mr. Vasti: So we don't have a resolution totally prepared? So then I would be in favor of continuing the Public Hearing until the next session and then at that time if a resolution is prepared then we can vote on it.

Chairman Wright: Does the Board feel the same way?

Mr. Casscles: No.

Chairman Wright: Then you are ready to go?

Mr. Casscles: I'm ready to go. We can make the resolution...make it up.

Mr. Honan: To the extent if there are...I think the Board by just reviewing them right now could essentially fill-in...I wasn't just quite sure after this discussion whether there was going to be movement of the house. Apparently, the applicant is not seeking to move it back further from River Road. The ones that do exist, I think could be reviewed by the Board and filled in as you go. If there is any additional conditions, I think they can be added at this point. I don't see any additional conditions coming up. I addressed that with the builder that any applicable...any changes to the plans that needed to be made would be made; and they could be reviewed by the Building Inspector for completeness. If there is anything else that the Board needs...

Mr. Vasti: If that's the case Counselor, then perhaps if we give you time to fill in the blanks and we move on the agenda by the time we are done with the next agenda item if you have a resolution put together and...I don't have any issues. I would be ready to vote tonight.

Chairman Wright: Okay, what do you think? Just want to get a sense...so we will take up the next item on the agenda and then...Mr. Honan just go ahead and fill in and then we will come back and review it and then we can have...if everybody feels comfortable we can bring it up for a resolution at that point.

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

Chairman Wright: The next item on our agenda is the continued discussion for the request of BHS Associates, LLC.

Request of BHS Associates, LLC – App. #14-05

A variance from the requirements of the Town of Stony Point Zoning Code Chapter 215, Article IV, Section 12-f – Use not permitted in LI zone, for a school, located at 15 Holt Drive, Stony Point, New York.

Section 20.04 Block 11 Lot 6 Zone LI

Mr. Casscles: Mr. Chairman, at this time I would like to recuse myself. I have a possible conflict of interest.

Chairman Wright: Mr. Casscles will be recusing himself for a possible conflict of interest. You are recused.

(Mr. Casscles, at this time left the room.)

Chairman Wright: It is a discussion; I guess...I went through the minutes of the meetings. I wasn't privy to the discussion so is there anything anybody wants to bring up as a discussion point in relation to this particular application?

(no response)

Chairman Wright: Just a couple of notes...if you want I can kind of walk through some of the key points about...this is a use variance so I just want to make sure that as we vote on a use variance that we cover the four (4) points.

Mr. Keegan: Is there four (4) or five (5)?

Chairman Wright: Four (4) for a use variance. So before I do that, were there any items that anybody from the Board wanted to bring up regarding this particular application?

Mr. Fox: We still, first and foremost, have to determine whether the Building Inspector's interpretation is correct or not correct?

Chairman Wright: I'm not sure I am following you.

Mr. Fox: Are they seeking relief and that's that.

Chairman Wright: So with respect to this particular application whether or not the Building Inspector's...

Mr. Fox: His determination was...

Mr. Sullivan: The first issue that the applicant brought up was that the Building Inspector's determination was wrong. He added to...a dual application. I commented in the memorandum stating that the current law...the application stated that it was unconstitutional to have a ban on schools...the case that was cited is a; it would be unconstitutional to have a complete ban on schools. In your Code there is not a complete ban; they allow vocational and technical schools. This is not a vocational or a technical school so this would be up to the Board to determine based on that if the Building Inspector did make a correct determination.

Chairman Wright: So is that an item you guys wanted to discuss or...was there a question you had on that. John do you want to add to it or...?

Mr. Fox: Just need clarification on the whole...I'm reading it clearly and it says a vocational and trade school and the Counselor said...obviously it made reference to whether we have to make a decision on whether that can fall into that or do you grant them relief?

Mr. Keegan: How do we do this? Do we do this by making a motion?

Chairman Wright: No. It's a discussion about...and you have to forgive me because I'm kind of coming into this "cold", so the first aspects seem to be whether or not, and I'm not sure if I'm articulating this correctly, whether or not the Building Inspector's determination that it required a use variance and that the school...it wasn't a constitutional issue with the school.

Mr. Sullivan: The application indicated that the Building Inspector said it; let me cite it from...,it cited cases that...there were cases in New York that said if there was a...it's a constitutional issue. It's unconstitutional in New York to completely exclude schools from the Zoning regulations and that was the argument of the applicant, but the law, the case that was cited does say that it was...it's a complete ban on schools. So if it said no schools could be allowed that would be unconstitutional. However, I don't know if the constitutionality of a statute enacted by the Town Board could be a decision to be made by this Board. Your decision would be based on your interpretation on whether this may be a vocational school or it may be a technical school. There's been no evidence to say that it's either a vocational...it's a school for children and disabled/autistic children. So, it would be the Board would have to decide. I can't make it for you, but whether or not the Building Inspector's interpretation was correct.

Chairman Wright: I guess...Mr. Fox do you have any specific thoughts on that yourself or is there something you wanted to explore and just kind of get an idea...

Mr. Fox: No, I think that clarifies it for me.

Mr. Porath: I have a question regarding the degree of what would be reasonable conditions. I am basing this on feedback I've had from members of the public; both here and outside this meeting where...there was a concern that at some point down the road if this variance was granted that it could open the door to perhaps, either the property owner or somebody else applying for say a, like a non-profit, use of a school or some other use that wasn't anticipated by this Board if the variance was agreed to. Can there be conditions that can prevent, at least this applicant, from applying down the road; that they would apply for a non-profit status of this facility in any regard? Is that a reasonable...?

Mr. Sullivan: A non-profit issue comes up in one of the cases and that was a specific Town Code that prohibited full-profit schools. Right now you are giving me use variance for a school for autistic children; or, however, you would want to frame it. That is what was in the application. Whether it is for profit or not that could be a condition that you're allowed to put certain conditions on variances. But, that could be in the scope of what you are being asked to do right now and that would be a zoning condition. As the other cases show, it was in the zoning laws that said that you could...they wanted only not-for-profit schools in that particular zoning interest. As yours would only allow vocational and technical schools. It would be up to the zoning legislation by your Town Board to put a restriction on that.

Mr. Vasti: If I understand your interpretation correctly, if the applicant was seeking to open up a school to teach people how to weld...students how to weld, let's say high school students or junior high school students, we wouldn't be sitting here having a debate; that would be perfectly legally?

Mr. Sullivan: If the Building Inspector determined...if the Building Inspector gave them the approval for it we wouldn't be here, yes.

Mr. Vasti: Okay.

Mr. Sullivan: The issue is at hand is that he denied them the permit because it was not an allowable use under your Code.

Mr. Vasti: So as a matter of semantics...

Mr. Sheehan: If I may...

Mr. Vasti: Yes, please Mr. Sheehan.

Mr. Sheehan: I denied this application...I would like to get back to Mr. Fox's question. I denied this not under any constitutional reason or whatever I denied it because it's not in our Zoning Ordinance. Our Zoning Ordinance says that you can have a vocational or a trade school, technical school, in that zone. When I spoke to the applicant's representatives, and we discussed what type of school it was, obviously I believe it's even on the record that no one is claiming it's a vocational school; the Town or the applicant; that's why I denied it. Obviously I wasn't looking up constitutional law or case law or so forth; I'm looking at what is proposed, looking at code and that's what I base my decision on. I think what needs to be done whenever you are going to vote regardless is: 1 – as John I think is trying to point out tonight; first you have to deal with the appeal, which is am I correct or incorrect by even sending them here. If the Board feels that I was correct then you move on to the use variance. Obviously, if you, I believe, if you believe I was incorrect well then there is no need for the use variance because then they shouldn't be here. But, just to make it clear, obviously I didn't look up case law, our zoning said this is allowed; this doesn't fit in that column.

To answer your question if a welding company/school came in, in my interpretation they would be allowed there; yes.

Mr. Vasti: Thank you.

Mr. Sheehan: Because that would be considered vocational or trade.

Chairman Wright: So just we know...I would like to walk through the four (4) items just to make sure that it is fresh in everyone's mind. So the four (4) items for a use variance are essentially:

1. The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financials. So I guess the question is going to be if you got them then whether or not you have some financials whether or not we have to judge whether they are competent and that they relate to each and every permitted use under this Zoning Ordinance in the LI District. So anything that, I guess theories is, that anything that you could put in that LI District you should be competent financial information that will prove that it couldn't give a return of...an appropriate rate of return.
2. That the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood.

3. That the requested use variance, if granted, will not alter the essential character of the neighborhood.
4. That the alleged hardship has not been self-centered.

So those are the four (4) items that are going to be part of the use variance.

Do we have any questions about those four? I think we have to meet all four (4) of them. Am I right Mr. Sullivan?

Mr. Sullivan: Yes, if one fails you must deny the application.

Chairman Wright: So with that, does anybody from...are there any questions from any members of the Board on that or...? Is there anything else we want to do on this particular application? Do we have any other items to discuss?

Mr. Vasti: I don't have any further discussion, Mr. Chairman.

Chairman Wright: Okay. So let's do this then...I will just go through quickly, are there any other...any remedies, any updates to the minutes of the meeting of July 3, 2014, or should we accept them as is?

*****MOTION: Mr. Porath made a motion to accept the minutes of July 3, 2014; seconded by Mr. Keegan. Hearing all in favor; the motion was carried.**

Chairman Wright: So with that, I think we can do a couple of things. I will take a motion if the Board deems to go into Executive Session for the request of BHS Associates for the purposes of receiving some legal advice from Counsel in this particular issue at hand.

Mr. Porath: Can I perhaps suggest to see if Counsel is almost done with that resolution if we can do that vote before we...if you are pretty close...rather than have the people sticking around...

Mr. Honan: If you would like to look at it...

(All Board members present reading over the Anderson decision, provided by Mr. Honan.)

Chairman Wright: Everyone had a chance to read it?

Zoning Board: Yes.

Chairman Wright: So why don't we then...I will ask Mr. Vasti to go ahead and read...Mr. Casscles would like to make a motion since we are deviating from our normal schedule.

*****MOTION: Mr. Casscles made a motion that the Board will be deviating from the usual schedule for the resolution; seconded by Mr. Vasti. Hearing all in favor; the motion was carried.**

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

In the Matter of Application #14-06 of Matt Anderson for a variance from the requirements of the Town of Stony Point Zoning Code Chapter 215, Article V, Section 15Ah.4-4: Less than required front yard/setback - required 25 feet, provided 14 feet; and Chapter 215, Article V, Section 15Ah.4-6: Less than required rear setback – required 25 feet, provided 20 feet, for the construction, maintenance and use for a 2-family residence, located at 16 River Road, Stony Point, New York, designated on the Tax Map as Section 21.09, Block 1, Lot 18.

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

The applicants were represented by Architect John Perkins and the builder George Stoll the following documents were placed into the record and duly considered:

Application; Building Department denial letter dated June 3, 2014; Survey and Plans; Department of Planning letter dated July 1, 2014; Revised Survey Plans; Photograph; a further revised survey Plan, dated July 14, 2014, and; a Rockland County Department of Highways work permit, dated May 14, 2014.

Additionally, members of the Zoning Board of Appeals personally visited the applicant's property and viewed it and the neighboring properties on Sunday June 29, 2014.

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 July 3, 2014, and was continued and concluded on July 17, 2014. The testimony of the following persons was duly considered: John Perkins; William Brosnan; Mary Ellen Brosnan; the Building Inspector William Sheehan; George Stoll, and; Mr. Anderson.

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 a parcel of land located on 16 River Road, Stony Point, New York. His home on the said parcel was destroyed in Hurricane Sandy and he now seeks to rebuild. In accordance with State and Federal Regulations, the two family home proposed will be elevated with room for parking for both residential units above ground but under the dwelling. The applicant originally proposed to have the stairs descending from the front door to a landing and they extending outward in a "T" configuration, but subsequently amended his plans to have the stairs return and be directed back under the structure. The furthest point of the stairs toward River Road comes to within 14 feet of the property line, whereas 25 feet are required for the front yard set back under the Code. The rear of the proposed structure extends within 20 feet of the rear property line, whereas 25 feet are required by the Code. Therefore, the applicant requests the variances set forth above to permit the construction maintenance and use of the proposed replacement structure.

WHEREAS, by letter dated July 1, 2014 the Rockland County Department of Planning, pursuant to the requirements of the General Municipal Law §239-1 & m, recommended modifications to include the following: 1.) review by the Rockland County Department of Highways and all required permits obtained; 2.) the plan reflect that the site have sufficient on-site parking spaces and provision made so that vehicles not back out on to the County highway; 3.) that the plan reflect topography and elevations for the site and that it is in the 100 year flood plain and the building will be built in compliance with the appropriate code provisions for Flood Damage Prevention; 4.) the appropriate Town of Stony Point official certify that the proposed construction is in compliance with the floodplain regulations of the Town and FEMA, and; 5.) the Town of Haverstraw be given the opportunity to review the proposal and its impacts on community character, traffic, water quality and drainage, stormwater runoff and sanitary sewer service, and

WHEREAS, this board heard testimony from the Building Inspector and Flood Plain Administrator for the Town of Stony Point, William Sheehan, that the site is in the 100 year flood plain and the building will be built in compliance with the appropriate code provisions for Flood Damage Prevention and that the proposed construction is in compliance with the floodplain regulations of the Town and FEMA, and

WHEREAS, the applicant applied for and received from the Rockland County Department of Highways the appropriate work permit dated May 14, 2014 for this project and a copy of same was submitted to the Board, and

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, and the testimony of the building inspector was that the placement of the structure is proper and appropriate in all respects.

(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":

No evidence was presented of any feasible alternatives that would achieve all of the benefits sought by the applicants.

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

The variance is substantial, but the variances sought are for the placement of the porch and stairs on the front and the deck on the rear of the premises. The deck and the porch and stairs are now needed due to the house being placed above the ground level on piers due to the new F.E.M.A. requirements and municipal regulations.

(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 not self created, as the property owners lost their home due to Hurricane Sandy, an act of God.

NOW, THEREFORE, BE IT RESOLVED, that the application for variances as set forth above is hereby approved on the following conditions:

1. The applicant shall submit a supplemental or amended plan to reflect that the site has sufficient on-site parking spaces and depicting the parking spaces and a sufficient turn-around area so that vehicles not back out on to the County highway, and further that the elevations and topography be shown on the plan and include the location of the 100-year flood plain. The applicant's amendment to the plan shall be made to the satisfaction of the building inspector.

2. This Board hereby overrides item 5 of the recommended modifications of the Rockland County Planning Department letter, dated July 1, 2014, for the following reasons: The referral to the Town of Haverstraw is not required pursuant to the General Municipal Law because the applicant is not seeking a use variance or a special use permit pursuant to GML 239-nn. Additionally, a recommendation by the County Planning Department to refer this matter to another agency for input is not a recommendation to modify or disapprove an action, as is contemplated in the statute. Further, the application does not seek a change of use from the residential use permitted as of right pursuant to the zoning district. This project is not reasonably expected to adversely impact upon the community character, traffic, water quality and drainage, stormwater runoff and sanitary sewer service. There are no areas of countywide concern relative to this application and this proposal is not expected to impact upon the Town of Haverstraw, 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. Anginoli, absent; Mr. Keegan, yes; Mr. Casscles, yes; Mr. Vasti, yes; Mr. Fox, yes; Mr. Porath, yes; and Chairman Wright, abstain.

Chairman Wright: So with that, I will come back to our other item, which is the continued discussion for the request of BHS Associates and will look for a motion to go into Executive Session.

Mr. Sullivan: I would like to just add one thing – you might want to discuss the conditions that the Rockland County Planning Board advised the Board to approve. There were four (4) items that the applicant followed up with the County and their site plan issues, in his opinion, and the County in their letter dated July 2, does indicate that the Board should put those conditions into the approval and that if they couldn't meet those criteria that the variance should be subsequently denied because of the failure to do it at the site plan issues. So those conditions should be considered in your resolution and we might just want to discuss that because you could override it; you need a super-majority and you might not have that now that the recusal is here.

Mr. Sheehan: I believe there was a subsequent letter...

Mr. Sullivan: Yes the subsequent letter; they can still override it by law, the Zoning Board...whether that would be a decision whether they would do it or not.

Chairman Wright: So I'm not sure I am completely following the...what were the four (4) items?

Mr. Sullivan: They are in the memorandum. They are at the back; the last section...that the outdoor play area – 17 parking spots are only on the site plan, there is only one (1) access to the lot; that they would want some sort of conflict and safety hazards and traffic circulation pattern. The Board would have to...they could override it if they wished to, but the County is pretty clear as to what they wanted.

Chairman Wright: So these items were raised by the County...so your advice would be...

Mr. Sullivan: Well it says here...if the conditions cannot be met during the site plan review process then the use variance must be rescinded. So this should be in the...again the statutes, the law says you can override those certain...that's just the discussion; whether you would do it or not is up to the Board. But, these would have to be put into the resolution that they would be conditioned and if they were not met in the site plan approval then you are rescinding the variance.

Chairman Wright: So the use case would be conditioned upon the being...

Mr. Sullivan: Yes...

Chairman Wright: After the...

Mr. Sullivan: During the site plan proceedings, yes.

Mr. Sheehan: All the County's recommendations.

Mr. Sullivan: We are only going to put the conditions in that the County...they would be put into the resolution. You just might want to know that because when we do the resolution we are going to put them in.

Mr. Sheehan: It has to do with what the County wants.

Mr. Sullivan: Yes. If this is over and above the four (4) elements that we've discussed.

Chairman Wright: So we'd still discuss the four (4) bullets; we still have to discuss Mr. Sheehan, whether his interpretation is correct or not and then after we've been through all that if we are going to grant the use variance these are conditions we would look to put in...otherwise we could override them with a super-majority.

Mr. Sullivan: With a super-majority to say that we don't want them...

Chairman Wright: So is there a motion for anybody to over-ride these four points.

(no response)

Mr. Sullivan: Then move on to them in the resolution.

Chairman Wright: So with that is there any other items up for discussion.

Mr. Vasti: This question is for Dan, our Counselor – does the Board have to be unanimous on this decision.

Mr. Sullivan: By a super-majority.

Mr. Sheehan: Maybe...I don't believe you guys have gone into Executive Session so...

*****MOTION:** Mr. Fox made a motion at 8:04 PM to go into Executive Session, pending litigation; seconded by Mr. Keegan. Hearing all in favor; the motion was carried.

Mr. Sheehan: You guys aren't going to vote?

Mr. Vasti: The fact that we have one (1) person recusing themselves and we have another member who is not here, I wouldn't feel comfortable tonight coming forth with a vote.

Mr. Porath: If I'm not mistaking, I think the applicant was comfortable with this decision, the decision whether it be in September or whenever...

Mr. Sullivan: He did agree at the last meeting to...

Mr. Emanuel: We agreed, I didn't say we were comfortable, but we did agree.

Chairman Wright: So, we are not going to come out of there taking a vote. I don't know if there will be any administrative things we could do. I don't see us taking any further action on this coming out of Executive Session.

*****MOTION:** Mr. Vasti made a motion at 8:46 PM to reconvene to regular Zoning Board of Appeals meetings; seconded by Mr. Porath. Hearing all favor; the motion was carried.

*****MOTION:** Mr. Keegan made a motion to adjourn the meeting of July 17, 2014; seconded by Mr. Vasti. Hearing all in favor; the motion was carried.

Respectfully submitted,

Kathleen Kivlehan
Secretary
Zoning Board of Appeals