

**Zoning Board of Appeals
Minutes September 6, 2012**

PRESENT:

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

ALSO PRESENT:

Brian Nugent

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 back everyone from the summer vacation. The first item on the agenda is the Public Hearing; the request of Desiree' Leone-Stoll and Carolee Stoll.

Request of Desiree' Leone-Stoll & Carolee Stoll – App. #12-05

A variance from the requirements of the Town of Stony Point Zoning Code Chapter 215, Article V, Section 15A h.1-6: Less than required rear setback Required 35 feet provided 22 feet (corner lot three (3) streets) located at 135 North Liberty Drive, Stony Point, New York, for an above ground pool.

Section 15.04 Block 2 Lot 17 Zone RR

Chairman Wright: Are there any representatives for the applicants present.

Unidentified Female Voice: Yes.

Chairman Wright: Could you please come up and identify yourself and give some details behind your application.

DO YOU SWEAR THAT THE TESTIMONY YOU ARE ABOUT TO GIVE IS TRUTHFUL?

**CAROLEE STOLL and DESIREE' LEONE-STOLL
135 North Liberty Drive
Stony Point, New York**

Ms. Carolee Stoll and Desiree' Leone-Stoll: Yes.

Chairman Wright: If you could just outline the rationale behind the pool and the application process and what you have come up with.

Ms. Stoll: We applied for a permit. We were denied and told that we lived on a corner lot; that it wouldn't work. We had to go for a variance, so we put it for our variance and here we are.

Chairman Wright: Anybody from the...so the pool – is the pool in place at this point?

Ms. Stoll: Yes.

Ms. Leone-Stoll: The pool is in place at this point.

Chairman Wright: Is there a specific reason why...are there other reasons behind getting the pool or is it just a recreational pool.

Ms. Leone-Stoll: The pool is for recreational purposes. The pool is also for...I was diagnosed with Lupus about 18 months ago. It was recommended that we it would be a good form of exercise and therapeutic exercise for me as well. It is on the smaller side because of our property and that it is narrow, but it is enough that I can get a little bit of exercise and so that is why we purchased a pool. It is a unique situation that we purchased the pool; that we came into being able to buying the pool on a floor model close-out deal from a seasonal store that was closing and unfortunately because it was a floor model it didn't come in a box and got delivered to our house so it kind of made it unique that we didn't really have much choice but to put the pool up at the point that it was delivered because it was just there. We had no place to put it so with that and the fact that it was beneficial to me for the last two months to be able to use it we put the pool up.

Chairman Wright: Were you aware that you needed a variance before the pool went up or did you put it up and you found out you needed to get the variance?

Ms. Leone-Stoll: When we purchased the pool, we applied for the permit before we actually purchased the pool with the understanding that we were going to get the permit. I actually had the assistance of the Assistant Building Inspector outline everything on my permit application for me and I was under the impression I would be able to pick-up the permit in a few days. So we went ahead and purchased the pool and because it was a close-out we weren't able to return the pool. After we purchased it, then we were told that we were denied so it was kind of in between there that we held off getting the pool as long as we can but the store was unfortunately closing so it had to be pulled off the floor and then the pool was delivered to our yard. We tried to hold off as long as we could and then we did put the pool up knowing that we still had to apply...we actually applied for the variance...

Ms. Stoll: We already applied and got the pool the next Saturday and Tuesday we put the pool up.

Ms. Leone-Stoll: That was back in July, I believe. But, we had already applied for our variance prior to putting the pool up. We had started the process – yes.

Mr. Vasti: A couple of questions. What is the capacity of the pool in gallons?

Ms. Stoll: In gallons I think ...

Mr. Vasti: If you don't have that, what is the dimensions of the pool?

Ms. Stoll: It is 18 round.

Mr. Vasti: And how high?

Ms. Stoll: 52 inches.

Mr. Vasti: Did you have a contractor install the pool?

Ms. Stoll: No.

Ms. Leone-Stoll: Her brother is a contractor so we had family install it.

Mr. Vasti: Because you do need to apply for a permit to install a pool of that size and at that time when you applied for the permit you would have been told.

Ms. Leone-Stoll: We put it right on the permit that we were having family install it and that was acceptable.

Mr. Vasti: So you did apply for a permit?

Ms. Leone-Stoll: Yes.

Ms. Stoll: Yes, we applied for it and he told us, it was on a Monday morning, he told us to come back Thursday or Friday. I called with a question actually because Mr. Valenza wrote on our plans that it had to be 10 foot from the property line and I thought it was only 5, so when I called him he then told me, "Oh, no I am wrong it is a corner lot you can't have it. You have to go for a variance." I then came in and spoke to Bill Sheehan. He explained it all and we went through the process.

Mr. Vasti: Let me ask you another question please. Given the current location of the pool if the pool can be moved is there room on the property to move the pool so that you would not need a variance?

Ms. Leone-Stoll: No, there is not.

Ms. Stoll: No, because it would be close to our house; it would be right on our house. You mean further from the road?

Mr. Vasti: Yes.

Ms. Stoll: Further back – no.

Mr. Vasti: So you wouldn't be in an area that is in violation at the present time.

Ms. Leone-Stoll: No, there is not.

Mr. Vasti: There is no other alternative site on your property to re-position the pool or relocate it?

Ms. Stoll: Unless you want it on 9W – no.

Mr. Vasti: On your property?

Ms. Leone-Stoll: No, sir.

Mr. Vasti: Thank you.

Mr. Fox: Your house is actually surrounded by three streets at this point?

Ms. Leone-Stoll: There is a private dirt road behind us, a private paved road to the side of us and 9W to the front of us.

Mr. Fox: Okay so Bobby Lane is a private road as well.

Ms. Leone-Stoll: Yes.

Mr. Fox: And there is another one behind the house?

Ms. Stoll: Danny Court.

Ms. Leone-Stoll: We have a copy of the survey...

Ms. Stoll: (inaudible)

Mr. Fox: So this is a right-of-way; it's not really a street.

Ms. Stoll: It's listed as Danny Court.

Ms. Leone-Stoll: There is a street sign. I don't know...

Mr. Fox: Is it a dedicated road?

Mr. Keegan: No, it's not a dedicated road. It's not big enough for a dedicated road.

Mr. Fox: Okay.

Ms. Leone-Stoll: It's a single lane dirt road. I don't think it is...

Mr. Keegan: Like a driveway.

Mr. Casscles: Carolee, you've been there through the winter – right...

Ms. Leone-Stoll: Yes.

Ms. Stoll: This is our 3rd winter.

Mr. Casscles: Did the Town plow that?

Ms. Leone-Stoll: No, they don't even plow the side road.

Mr. Casscles: Then if the Town does not plow it then it is not a dedicated road.

Mr. Vasti: Did anyone from the Building Department physically come out to your property to look at the pool?

Ms. Leone-Stoll: Not that I am aware of.

Mr. Vasti: Okay.

Ms. Leone-Stoll: I have not been aware.

Mr. Vasti: In addition to needing a variance...

Ms. Stoll: Excuse me – the only three gentlemen that we have been told came to our...

Mr. Vasti: Okay – from the Building Department – the Building Inspector.

Ms. Leone-Stoll: Not that I am aware of.

Mr. Vasti: I am concerned because In addition to the variance I am concerned about a fence in closer proximity to the pool to prevent accidental drowning, to prevent...

Ms. Stoll: Our entire yard is completely fenced in.

Mr. Vasti: Completely fenced in. Does that meet the requirements?

Ms. Leone-Stoll: A fence is not required...

Mr. Fox: It is an above ground pool.

Ms. Stoll: It is 52 inches. It's above the ground and it's a 52 inch pool. If it was 48 inches or below we would have to have a 4 foot fence. So we have a 52 inch pool and a 4 foot fence.

Mr. Vasti: Okay thank you.

Chairman Wright: Any other questions for the applicants? Okay thank you very much. Anybody else from the public wish to speak on this application? Yes mam, if you could just come forward and identify yourself?

The testimony you are about to give is truthful?

Unidentified female voice: Yes. My name is

CHRISTNA RAUCHET

I am the trustee for the family trust that owns one of the houses around that area.

Chairman Wright: Can you identify which house it is?

Ms. Rauchet: 5 Bobby Lane. One of my main concerns is Bobby Lane. As you know it is not a public road so it is not plowed or taken care of by the City, it is private so we pay for snowplow and anything that needs to get paved or fixed or whatever. Something happens to that pool and all that water comes and the pool breaks down, the water gets all over – who is going to pay for that road repair. We are. So that is my biggest concern. And the second thing, I am a stickler for rules. I've had my house done. I've had my own pool done. I followed all the rules and did all my dotted my "I's" and crossed my "T's" and I think everybody should do the same. But my main concern, like I said, is if anything happens with that water that spills along that road, because it is very close to the road, we have to pay for that whole thing to be fixed. The sewer issues that we have to deal with; that is our main concern.

Mr. Casscles: For your information the map we got says it is 47 feet from the road. That is quite a ways.

Ms. Rauchet: Look we've had problems with that road with the rain, so just with the rain itself the road is buckled; so that is my concern.

Mr. Keegan: So the road is already in disrepair. Is that what you are saying?

Ms. Rauchet: The road is the road. If something additional happens to it, I don't know what...

Mr. Keegan: I am just adding to your comment. I am sorry – I got lost with the dotting of the "I's" and crossing of the "T's". What does that mean?

Ms. Rauchet: What I am saying is look – that means I've had to...when I had to do something with my house in Stony Point, I had to follow all the rules and here they didn't get their variance, they put up their pool. Everybody has circumstances. I have circumstances, but still we do what we have to do. That is what I am trying to say. Because then you know somebody else will say – they didn't have to do it so I don't have to do it and that is where everything gets messed up in this world. Also, we did, we were told, when we said the pool was up we were told to file a complaint and I did. I handed in something, but I never heard anything again from it. I don't know what happened.

Mr. Fox: So your primary concern is if the pool was to give out and the water would come down.

Ms. Rauchet: Yes. We pay for the private plow ourselves and any repair that's had to get done we've had to have done already ourselves; the blacktop and what not. Yes, that is a major major concern. There is a sewer not far from that right there on that corner that takes the brunt of all the slopes and all the rain from Danny Court. Danny Court it's really...I mean it is a road that goes into driveways and to the houses back there and they have access to theirs off of Bobby Lane too. They use Bobby Lane to pull into their side of a driveway right there too and they don't contribute to any of the snowplow or maintenance or anything else either. So it falls on us.

Chairman Wright: Where do you live relative to...

Ms. Rauchet: Right here in Stony Point. I live in Pyngyp.

Chairman Wright: The house...

Ms. Rauchet: My mother lives in the house.

Chairman Wright: And which house does she live in?

Ms. Rauchet: On 5 Bobby Lane and she is dying of cancer.

Mr. Casscles: Straight in and up the hill.

Ms. Rauchet: That's the one.

Chairman Wright: So you drive down Bobby Lane and it is on the right hand side?

Ms. Rauchet: You practically drive right into it.

Mr. Keegan: Is it an adjoining property? So you are just concerned about the road; you're not concerned about your mother's property?

Ms. Rauchet: No, I'm not concerned about her property; I'm more concerned about the maintenance to the road because it's always been our brunt...so that's my...thank you.

Chairman Wright: Any other questions from the Board?

Mr. Vasti: I'm not totally satisfied Mr. Chairman looking at the pictures and looking at the plot that was provided to us that is signed by Mr. Anthony Celantano. I imagine he is the architect involved with the property as surveyor. I'm not totally satisfied that there's not an alternative area on the property to relocate the pool to make the variance less severe. I understand there is going to be a need for a variance, but we need 35 feet and we are only providing 22. That is significant. That is a significant amount of variance that is being requested here. And if we had a little wiggle room to move the pool slightly to a different location, it might make the variance less significant; less severe. I was wondering how we could obtain a more professional opinion on that for the benefit of the applicant. Since the applicant is here seeking relief.

Chairman Wright: Does the applicant have any response to Mr. Vasti's inquiry.

Ms. Stoll: Where are you suggesting is what I want to know?

Mr. Vasti: I am asking you that question.

Ms. Stoll: On our property I feel there is no other place for that pool. These three gentlemen were here. There is no other space; unless you want me to go closer to Bobby Lane. That is the only other place I could put up the pool.

Ms. Leone-Stoll: There is a blacktop driveway that goes all the way to the shed. We have a swing set that is already in place there and the property kind of narrows. We've walked the property; we've measured everything with her brother. I don't know other than moving it closer to the house.

Mr. Vasti: Do you need a pool this large? Could you of selected a smaller circumference?

Ms. Stoll: There is one size smaller. A 15 foot round and it was tiny.

Ms. Leone-Stoll: To be honest it really wouldn't be too beneficial as far as being able to swim. Eighteen foot is just enough that I can do a lap and be able to turn and come back.

Mr. Vasti: Okay, thank you.

Ms. Leone-Stoll: Honestly we did our due diligence trying to find a place that we wouldn't have to require a variance. I would welcome suggestions, but I don't know where else...

Mr. Keegan: Do you have any idea of the capacity of the pool – like gallons?

Ms. Leone-Stoll: I was just looking at the paperwork it doesn't say...

Mr. Fox: I would say – I have a 24 foot round, I think I am about 16,000 gallons.

Ms. Stoll: It doesn't say.

Ms. Leone-Stoll: I was surprising shocked in how quickly it filled.

Mr. Fox: It's probably in the ballpark of 10,000 gallons.

Ms. Stoll: It doesn't say. It just gives us the actual 18 round.

Mr. Vasti: Do you plan on keeping the pool up the entire year or are you going to dismantle it in the winter?

Ms. Leone-Stoll: No, it will stay up the entire year.

Mr. Vasti: Are you going to take steps to winterize the pool to prevent an accidental bursting.

Ms. Leone-Stoll: Absolutely.

Mr. Vasti: Okay and you are going to have a competent company do that.

Ms. Leone-Stoll: Yes.

Mr. Vasti: Because that is very important and I am sure that would make your neighbors have another level of comfort.

Ms. Leone-Stoll: I mean we got it at a discount it still cost us money and our house, like I said, we are at the bottom of the hill...

Ms. Stoll: We take all the run-off from Bobby Lane. We are the ones that are flooded all the time.

Ms. Leone-Stoll: We would be the ones who got flooded if the pool ever went. We are going to take every step to make sure that it is safe. We have a 4 year old son; we are not going to...we are in emergency services we know what safety is. We are not going to risk anybody's life or our safety because that is not us. Thank you.

Chairman Wright: Is there anybody else in the public who has any input? If not, I will take a motion to close the Public Hearing.

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

*****MOTION: Mr. Casscles made a motion to deviate from the normal procedure and grant the variance; seconded by Mr. Vasti. Hearing all in favor; the motion was carried.**

Chairman Wright: I just have one question, one of the things we have here, but we talked to the attorney about information we had started to draft an overall resolution, but that resolution didn't really have an account of any of the descending voices in here and my only question is do we want to take some time to make sure that those comments are captured in the resolution and have the vote next week or do we want to just go ahead..I am opening this up for discussion to the Board.

Mr. Morlang: I would think that with the legalities involved and the possibility of the road being damaged I think the hearing notice or the hearing minutes should include everything; including the discussion of the comments from the neighbors. I would think, just to solidify it.

Chairman Wright: Anybody have any other thoughts on that?

Mr. Nugent: Mr. Chairman if I may, if you would like I can read into the record for the purposes of the resolution rather than where it would say no objections to the variance we received I can give a brief recitation of the objection that as stated for the resolution; otherwise, unless you think there are any other issues with the resolution we can just strike the "no objections to the variance received" and put in language that I will state on the record for the drafting of the resolution.

Chairman Wright: That sounds fine to me.

Mr. Keegan: Do we have a motion and a second or do we want to take a vote on it? Or do we want to take a vote that we are going to vote on this tonight?

Mr. Casscles: Let's get that motion first.

Mr. Keegan: Didn't we have a motion and a second?

Chairman Wright: We will vote on it tonight and then we will have the reading.

Mr. Nugent: Do you want me to read the language first so the Board can approve it, the statements I am going to add or do you want me to read the whole resolution and just include it?

Chairman Wright: Why don't you read the piece that you are going to modify...

Mr. Nugent: Okay, this way you can first see if you agree with that characterization and this would be following the second to the last whereas clause on the second page where it says "no objection to the variance were received". We would strike that sentence and insert the following: "That Christina Rauchet, trustee of the home at 5 Bobby Lane, Stony Point, New York, expressed two concerns.

1. The potential damage to Bobby Lane, a private road, if the pool gave way and water flowed onto Bobby Lane because the road is privately owned and maintained and Bobby Lane residence would absorb the cost.
2. Ms. Rauchet also expressed a concern that the rules should be followed with respect to the construction of the pool."

Mr. Keegan: I am sorry what was the second part.

Mr. Nugent: That she expressed a concern that she also believes the rules should be followed with respect to the pool construction.

Chairman Wright: What is the Board feeling on the language?

Mr. Vasti: Well I would also like to include that the applicant was amicable and willing to care for the pool, winterize it and to safeguard it. Take every necessary precaution to insure the integrity of the pool and prevent any leakage all season long, all year long, and that they answered the questions in a satisfactory way.

Chairman Wright: I just have another question too – is the variance only for this pool or any pool that they want to put in afterwards.

Mr. Keegan: We can add that right now.

Chairman Wright: If we can limit it to this particular pool, I think that would be...

Mr. Fox: I think if you take that down, you would have to apply for a permit again.

Chairman Wright: So if we could just be explicit...

Mr. Nugent: I think they still have to apply for the permit, but the variance would run with the land so that another words...the next person or the applicant, if they wanted install a new pool, would have to go through the permit process, but they wouldn't be required to come back; assuming it is another 18 foot, same circumstance.

Mr. Morlang: In other words, as long as a new pool doesn't exceed the footprint of the one that we are...

Mr. Nugent: Yes, I think that is accurate and honestly that's a determination the Building Inspector could make, but even if the pool were higher or lower that could require them to come back. But, for a 52 inch by 18 foot round, assuming you want that in the decision that's what approved. Because the fence is an issue for a 52 inch the fence is not required, but if it were 48 then you are opening up new issues where a fence would be required.

Chairman Wright: Anybody else have any...

Mr. Casscles: I would like to make a motion to accept that wording.

*****MOTION:** Mr. Casscles made a motion to accept the wording for the resolution; seconded by Mr. Fox. Hearing all in favor; the motion was carried.

Chairman Wright: So Counselor if you would like to read the whole resolution into the record we can go ahead and take our vote.

*****MOTION: Mr. Nugent offered the following resolution; seconded by Mr. Morlang.**

In the Matter of Application #12-05 of Carolee Stoll and Desiree Leone-Stoll for a variance from the requirements of the Town of Stony Point Zoning Code, Chapter 215, Article V, Section 15A h.1-6 less than required rear setback, required 35 feet provided 22 feet for the construction, maintenance and use of an above ground pool, on premises located at 135 North Liberty Drive, Stony Point, New York designated on the Tax Map as Section 15.04, Block 2, Lot 17.

The premises which are the subject of this application are located on the corners of Danny Court, Bobby Lane, and Route 9W a.k.a. North Liberty Drive in an R1 Zoning District.

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

Application; Building Inspector's denial letter dated 7/25/12; GML referral form; Rockland County Planning letter dated 8/6/12; letter from applicant dated 7/24/12; 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 or around August 26, 2012.

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

WHEREAS, a public hearing was held on September 6, 2012, and the testimony of the following persons was duly considered: Carolee Stoll, Desiree Leone-Stoll and Christina Rauchet.

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 is improved with a single family home. The property is a unique parcel with frontage on three different streets: Danny Court, Bobby Lane, and Route 9W. The front of the house faces Route 9W, and the rear of the property abuts Danny Court. The applicants wish to construct an 18 foot above ground pool in their back yard, between the house and Danny Court. The pool is necessary and required for one of the applicants for medical reasons. The only feasible location for the pool is in its proposed location, 22 feet from the rear property line abutting Danny Court. The Code requires 35 feet in that location so an area variance is requested. The pool presents no sight line obstructions for vehicles on either Danny Court or Bobby Lane.

Christina Rauchet, trustee of the home at 5 Bobby Lane, Stony Point, New York, expressed two concerns. The first, damage to Bobby Lane, a private road, if the pool gave way and water flowed onto Bobby Lane because the road is privately owned and maintained and Bobby Lane residence would observe the cost. Secondly, Ms. Rauchet also believes that rules should be followed with respect to the pool construction. The applicant responded to those concerns as she would take all appropriate steps to maintain the pool and insure its integrity year-round.

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.

(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 to the Board of any feasible method to achieve the benefit sought other than the area variance requested herein.

(3) “whether the requested area variance is substantial”:

The 13 foot variance sought is substantial in terms of overall number of feet, but the unique dimensions and layout of this lot and the absence of any negative impact on any nearby property are mitigating factors.

(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 by the desire to place a pool in the yard contrary to code, but the unique nature of this particular lot is certainly 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 above ground pool is hereby approved, on the following condition(s):

1. The pool shall be limited to 18 feet in diameter and no less than 52 inches in height and shall be in the location set forth in the application, no closer than 22 feet from the Danny Court property line; 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, yes; Mr. Keegan, yes; Mr. Casscles, yes; Mr. Vasti, yes; Mr. Fox, yes; Mr. Porath, absent; and Chairman Wright, yes.

Chairman Wright: Second order of business is the minutes of July 19, 2012.

*****MOTION:** Mr. Fox made a motion to accept the minutes of July 19, 2012; seconded by Morlang. Hearing all in favor; the motion was carried.

*****MOTION:** Mr. Keegan made a motion to adjourn the meeting of September 6, 2012; seconded by Mr. Fox. Hearing all in favor; the motion was carried.

Respectfully submitted,

**Kathleen Giordano
Secretary
Zoning Board of Appeals**