

**TOWN OF STONY POINT
Zoning Board of Appeals
Minutes October 3, 2013**

PRESENT:

Mr. Morlang (absent)
Mr. Keegan
Mr. Casscles
Mr. Vasti (left at 7:51 PM)
Mr. Fox
Mr. Porath

ALSO PRESENT:

William Sheehan, Building Inspector
Dave MacCartney, Attorney

Chairman Wright

Chairman Wright: Good evening. I see by the clock it is 7:00 PM. I will call this meeting of the Zoning Board of Appeals of the Town of Stony Point to order, please rise for the Pledge of Allegiance.

Okay, we have four items on the agenda. The first two items are Public Hearings. We will start out with the request of Eric Ramos.

Request of Eric Ramos – App. #13-07

A variance from the requirements of the Town of Stony Point Zoning Code Chapter 215, Article XIV, Section D.1-a - Less than required side setback – required 15 feet, provided 9.1 feet and Chapter 215, Article XIV, Section D.1-b – Less than required total side, required 28.75 feet provided 14.5 feet, located at 181 Route 210, Stony Point, New York, for a deck.

Section	15.03	Block	1	Lot	46	Zone	RR
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*****MOTION:** Mr. Vasti made a motion to open the Public Hearing; seconded by Mr. Keegan. Hearing all in favor; the motion carried.

Chairman Wright: Is the applicant present – can you just state your name and address.

**Eric Ramos
181 Route 210
Stony Point, New York**

Chairman Wright: The testimony you are about to give here is truthful?

Mr. Ramos: Yes.

Chairman Wright: You want to describe to us what you are looking to do?

Mr. Ramos: I am looking to finally add a porch that my family can use off the kitchen and dining room; on the side of the property which is the only exit I have on the second floor of the house besides the front entrance. So it will allow me to use my front yard and have access to the back yard, too.

Chairman Wright: Anybody from the Board have any questions?

Mr. Keegan: Do you have any diagrams or anything that has what you intend to do?

Mr. Ramos: Yes. I submitted the...the plans were submitted and denied, but then I resubmitted a set.

Ms. Kivlehan: The plans were submitted with the application and as a matter of fact plans were also resubmitted which you also received.

Mr. Vasti: Mr. Ramos, why must the deck be that much larger?

Mr. Ramos: Its 14 feet. I have 20 feet approximately to the end of the property. I need enough room to actually get out of the house and to be able to use it for the family for a sufficient table and seating; be able to open the door, actually have a step come out and then have room to have a table and stuff for the family.

Chairman Wright: Does anybody else have any other questions? Any other questions for the applicant?

Mr. Casscles: No.

Chairman Wright: Anybody from the public have any questions for Mr. Ramos or any public input on the application?

Mr. Vasti: If you had to redesign your deck and slim it down a little bit with the side, do you have enough room to go in the opposite direction to create the area that you need?

Mr. Ramos: Which opposite direction?

Mr. Vasti: Well you seem to have more of an issue with the side then you do with the other direction. Do you have any other room aside that you could reposition it and relative to the way your house is set?

Mr. Ramos: No.

Mr. Vasti: You are forced into this design?

Mr. Ramos: Yes.

Mr. Vasti: There is no alternative in any way?

Mr. Ramos: No. Nothing that I could come up with. I've spent a lot of time...

Mr. Vasti: Did you have an architect look at this?

Mr. Ramos: What's that?

Mr. Vasti: Did you have an architect look at this?

Mr. Ramos: I drew the plans and then submitted them to the Town Building Inspector.

Mr. Vasti: Okay.

Mr. Fox: Mr. Ramos, you said that your points of egress are only at the front and the side?

Mr. Ramos: Towards the front and that's the side entrance – it has temporary stairs right now. I am using this to allow...

Mr. Fox: So there is no rear egress?

Mr. Ramos: No. Out the back; no and it's very high out the back. It's a second story.

Mr. Fox: No lower level at all?

Mr. Ramos: There is a lower level; - it's a ground level. But, it's like a ranch style house so the upper level there is no doors out the back and if it was it would be very high. But, I don't have any access – no doors out the back of the house. So I can't go out the back of the house, I can't go out the east side of the house – that's the only side of the house that I can actually get to.

Mr. Vasti: Mr. Ramos, this deck is going to be totally new construction?

Mr. Ramos: Yes.

Mr. Vasti: And when you...if you were to be approved for this new deck is it going to close in any of the windows on the house? In the basement...do you have windows in the basement?

Mr. Ramos: No, not on that side. Windows in the basement are on the back side of the house; the east side of the house.

Mr. Vasti: So it's not going block any windows or any walk-outs from the house.

Mr. Ramos: Not on that side of the house.

Mr. Vasti: No egress is going to be blocked?

Mr. Ramos: Not at all.

Mr. Keegan: Right at the corner of this deck does that say 5 feet 5 inches from the property line?

Mr. Ramos: Yes.

Mr. Keegan: And what is the variance asking for – is that right 5 feet 5 inches?

Mr. Ramos: It should be 14.

Mr. Keegan: What does this say here – 9 feet 1 inch?

Mr. Casscles: The description is there somewhere.

Mr. Sheehan: The discrepancy is 9.1 feet is on the other side.

Mr. Casscles: It's on the other side, Bill?

Mr. Sheehan: He has a non-conforming lot which means he has to have 15 feet on one side; which he doesn't on either side. So that's where you get 9.1 feet and he is in compliance.

Mr. Keegan: Oh okay thanks Bill.

Mr. Casscles: That existing driveway that is there – is that used? The existing driveway that is on that side near your neighbor's property...?

Mr. Ramos: It is all grass and its open area. They don't use to park any cars in the back or drive into the back. It's too tight. It turns around to the left which is to the west and it's too tight to get a car down. I am actually looking to clean up that area with my neighbor so we can make it more of a usable area.

Mr. Vasti: Does that driveway, Mr. Ramos, that's pictured in the diagram does that neighbor have an easement for that piece of driveway on your property – cause it seems to come into your property line the way its drawn on this survey?

Mr. Ramos: I know mine ends right up against his...so.

Mr. Vasti: Is it a shared driveway?

Mr. Ramos: No. It is his property.

Mr. Vasti: It is just confusing looking at the survey because where the proposed deck is going it appears that that driveway, or whatever it is – grass or gravel strip, protrudes on to your property line?

Mr. Ramos: No, I would be 5 feet off of that.

Mr. Vasti: Okay.

Mr. MacCartney: The survey does show that. I see what you're saying. Just looking at it it shows the driveway coming into your neighbor's property and then coming on to your property – right next to the deck that you are proposing; it is half on, half off. Could you explain that to the Board? It is unclear to me.

Mr. Ramos: It is all grass. There is no macadam there. There is not anything there. So I don't – I don't know – are you looking at the same thing.

Mr. Vasti: I think for clarification we would need to know if that driveway, if there is some sort of an easement or maybe there was a past agreement for the shared driveway.

Mr. Ramos: No, there is no driveway. The way that my neighbor's house is tiered – he has an upper lawn and a lower lawn and the grass area goes all the down. It bends around to the back. There is no driveway. I see what you are seeing there – there is concrete there. There is all concrete because it was all shared property at once, back when it was all one family, so there is still concrete steps which you/concrete slabs which were "mish moshed" there. You will still see those today. But, you don't drive over – there is no usable space where you are seeing that corner portion that is on my property. It is a cliff.

Mr. Vasti: How does your neighbor access his property – does he have a separate driveway then you?

Mr. Ramos: On the other side of the house he has a driveway that he uses full time. That one is actually a macadam driveway.

Mr. Vasti: Your neighbor is aware of this application?

Mr. Ramos: Yes, I submitted the return receipt forms.

Ms. Kivlehan: Everything was sent and the cards came back.

Mr. Vasti: The neighbor responded back that they received it?

Ms. Kivlehan: They responded back that they received the letter.

Mr. Vasti: Okay.

Mr. Casscles: I have a question for Bill.

Mr. MacCartney: Just for the sake of clarity – on your diagram the area where you are proposing to construct your deck, that area that has the diagonal cross entrance to it, that long rectangular area, or is just a portion of that?

Mr. Ramos: Let me see. No, this is the area. This is showing the concrete wall that's here. It is actually a step down. It just happens to run on both properties. It was there when they split up the properties.

(too many people talking and away from the microphone)

Mr. MacCartney: If you, just also, you indicate in your application that there was a prior variance that was granted in July 2005...

Mr. Ramos: For the front of my house.

Mr. MacCartney: Oh, it didn't relate to this.

Mr. Ramos: No, not at all. It was a front porch, with a roof cover. It encroached on the front of the property.

Chairman Wright: According to this diagram you have on one side of the house you have 9 feet to get to the backyard and on the other side with this new deck in there you have 5½ feet to get to the backyard...

Mr. Ramos: Plus the space between...5 feet and then there's also another 10 feet to his fence. It's all grassed area. It's not closed in. This isn't...it still be almost 25 feet apart.

Chairman Wright: Let me make sure I have...so the 5½ feet would be to the end of your property...

Mr. Ramos: To the end of my property line.

Chairman Wright: and if your neighbor was to build a fence there...

Mr. Ramos: He has one that is 20 feet in already, because he has a two-tiered yard and that's his fenced in which has been fenced in since I lived there. He doesn't use it because there is a cliff off the end of it. It's a "mish mosh".

Mr. Casscles: But, if it changed hands the new owner could put a fence 5 feet from your deck?

Mr. Ramos: If it's on their property...whatever guidelines they need to put their fence on their property I would say they could.

Mr. Vasti: Mr. Ramos, the existing paver patio is still there?

Mr. Ramos: Yes.

Mr. Vasti: Then you are going to access the proposed deck by walking out of your home onto the paver patio and then up the steps to the deck?

Mr. Ramos: Out the door and then down two steps on to the paver deck. It will be in line with the patio paver deck.

Mr. Vasti: So there is no way to access the deck from the house other than going to the paver patio first?

Mr. Ramos: Well it's going to be the full length. The access is going to be the full length of the patio that's already pre-existing.

Mr. Vasti: I understand that...

Mr. Ramos: Then you are going to walk up onto the deck, the door will be right there that to accessing the house and then you will continue passed the deck, down to the second tier, which will allow me to get into the back yard without making more stairs because I have two young children and I don't really want 25 steps down to the back yard. That's why I tiered it that way and try to keep it as slim as possible.

Mr. Vasti: I gotcha. You wouldn't consider building your deck all the way behind the house because you have a large amount of property in the back?

Mr. Ramos: It is very high. I don't really want to be that high with the children up there and then build a cat-walk along that side of the house; and then wrap it around and then build it – no.

Mr. Vasti: No – you would rather not. And you wouldn't be able to access it from the back of the home?

Mr. Ramos: No, because there is all windows in the back of my house. I don't have any doors.

Mr. Porath: They are probably all bedrooms...

Mr. Ramos: Bedroom, living room, bathroom. They don't lend yourself to reconstruction.

Mr. Vasti: And plus the kitchen is probably closer.

Mr. Ramos: The kitchen is right there.

Mr. Vasti: Right there; which makes sense.

Mr. MacCartney: It's an open-aired deck?

Mr. Ramos: Yes.

Chairman Wright: How high would it be off the ground?

Mr. Ramos: At that portion it would only be 5 feet off grade and then as it goes to the back yard; it could possibly be 7 feet off grade and then it will go down to 4 feet off grade once the four steps, or whatever steps come down to the back yard. I am trying to tier it safely so I don't have a big leap.

Chairman Wright: And what is the total square footage of it then?

Mr. Ramos: 14 x 20 and then the back deck is...

Mr. Keegan: So 280.

Mr. Ramos: Yes.

Chairman Wright: Its 14 x 16 then; approximately.

Mr. Ramos: It is 14 x 16 and 11 x 8 for the smaller deck.

Chairman Wright: It looks like you have two sections here. I am looking at it – I see 14 feet and then it looks like 14.5 or is that 19 or maybe 14.5...

Mr. Ramos: And that gets me to the back of the house safely and then down to the next tier down below to the back yard.

Chairman Wright: And that's 16 feet on here – then it goes 16 feet x 10 feet. Is that 16 feet the whole length or is that just the lower portion?

Mr. Ramos: The lower portion.

Chairman Wright: The lower portion is going to be 16 x 10.

Mr. Ramos: Correct and the upper portion will be 14 x (went over to attorney's table to look at map)

(not audible – away from microphone)

Chairman Wright: So the calculations were for the upper?

Mr. Ramos: I have it on the original plans. It shows two tiers.

Chairman Wright: I am just trying – I'm assuming there is two tiers. Because 10 feet and then 14 feet...

Mr. Ramos: 16 x 10 and then 14 x...

Mr. Porath: So I am clear, the key issue related to the variances you are requesting is how far it is off the property line? Is it consistently 5 feet the length of the whole entire deck from the neighbor's property line; is that the issue that we are considering?

Mr. Ramos: The smaller deck is actually shorter. The one down below...I made that shorter.

Mr. Porath: So that is not as wide?

Mr. Ramos: Not as wide. It's not as wide.

Mr. Porath: So if you are standing looking at your house you got the deck and it runs down along the side of your house.

Mr. Ramos: To the end of the house and then the...

Mr. Porath: The worst case scenario, even though there is a fence, it's no more than...the worse case is its 5 feet off your property line and if somebody, some neighbor down the road wanted to put a fence there it would be 5 feet. As you go forward, it actually is more space.

Mr. Ramos: Correct.

Mr. Porath: Okay.

Mr. Ramos: Once you get passed the back of the house; yes.

Mr. Porath: And if I understand that's the variance that we are considering?

Chairman Wright: Yes, but I am just trying to get a sense of the entire size of the deck here, so it's not clear...

Mr. Keegan: 16 x 10 is 160 and what is the other one?

Chairman Wright: 14 by...

Mr. Keegan: 14 by what?

Mr. Sheehan: That is actually not the variance you are considering.

Mr. Vasti: It's the side.

Chairman Wright: I understand.

Mr. Vasti: It's the side setback.

Chairman Wright: But, one of the things we have to ask is what's the...

Mr. Sheehan: What you are considering is he doesn't have the one side that is 15 feet. If he had 15 feet on the east side of the house, you would not need a variance. He could put the deck 5 feet off the property line. The problem is he doesn't have 15 on one side of the house.

Mr. Fox: It is a non-conforming lot.

Mr. Porath: It simplifies the matter even more so.

Chairman Wright: We have five criteria – one of them is how substantial is this. I am trying to get a sense of the size of the deck. I understand that we have a portion of it, but I want to get a sense of the whole size of the deck.

Mr. Fox: Can I see one of those copies?

Mr. Casscles: Bill, at 15 feet is that what they need for an accessory building?

Chairman Wright: If we are going to have the Building Inspector present, let's bring him up and we will do what we have to?

Mr. Ramos: It is 14 x 34.

Chairman Wright: 14 x 34.

Mr. Ramos: 14 feet towards the property line. 34 feet gets me from in front of the door, the egress, to the back of my house; right to the edge of the house which gets me to the lower tier.

Chairman Wright: And the 16 x 10 is the...

Mr. Ramos: Is the lower portion.

Chairman Wright: Is additional to that.

Mr. Ramos: That's the lower portion, yes. It's going to be 4 foot narrower.

Chairman Wright: So that's over 500 square feet from the top one and 160 for the bottom.

Mr. Ramos: Yes.

Chairman Wright: So now does anybody have any questions for Mr. Ramos? If not, then I will then ask Mr. Sheehan if you want to come up. Does anyone have any questions for Mr. Sheehan? If you want to come up – does anybody have any questions for Mr. Sheehan?

Mr. Casscles: I have one – that's all.

Chairman Wright: Mr. Sheehan can we just – can you identify yourself so we can get you in the record.

Bill Sheehan

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

Mr. Sheehan: Yes.

Mr. Casscles: Bill, if I understand you correctly – you are supposed to have one side that is 15 feet. Is that 15 feet the same as if you were putting an accessory building between the house?

Mr. Sheehan: No. To be honest with you I didn't expect to...my understanding is the variance is for less than required side setback; 15 feet required proposed 9.1.

Mr. MacCartney: The 9.1 is on the far side – can you explain that to the Board.

Mr. Sheehan: Okay. It is a non-conforming lot. So on a non-conforming lot, because what that means it is not wide enough. So anything – if it's under 100 feet wide you are allowed to, the Code says to have one side 15 feet and reduce your total side yards by 9 inches every foot your short. So since he is putting a deck on that side either side doesn't have 15 feet. One side has to have 15 feet. He meets the total side, but not the 15 feet. So that's why I chose to use the 9.1 because that's the closest distance to 15 feet.

Mr. Casscles: So the variance is basically on the deck side; it's the other side.

Mr. Sheehan: Correct because he's not here for the deck being too close to the property line what he is here for is he doesn't have 15 feet on one side of the house.

Mr. Casscles: Okay.

Chairman Wright: I do have a question now – so from a compliance prospective there's no need for any variance for him to take the deck out to 5½ feet to his other property line on the other side?

Mr. Sheehan: Well there is because by putting the deck there he is eliminating one side of being 15 feet.

Chairman Wright: Because that is 15 feet now.

Mr. Sheehan: I think it is probably more. It is 5 feet short. If the deck is 14 he has got to be about 19 feet or so.

Mr. Casscles: Yeah 19.5 I think it says.

Mr. Sheehan: But, when I do the variance, I do it the closest thing to 15 feet. He is 6 foot short or 5.9 feet short of the 15 feet. That's why we chose the 9.1.

Chairman Wright: Got it.

Mr. Vasti: Bill, is there any way he can continue that paver patio instead of a wooden deck and keep it as close to the ground as possible?

Mr. Sheehan: Well anything under a foot below grade you are allowed to go into the setback, but it would be pretty difficult to from the second story door to jump down to the patio.

Mr. Vasti: I agree.

Mr. Sheehan: There is an easier way to get down there. I believe he probably has the bedrooms and so forth in the back so the access is off the kitchen.

Mr. Vasti: He has a small deck there now.

Mr. Sheehan: I am not familiar with it. I don't know.

Mr. Vasti: It's at grade.

Chairman Wright: Any other questions for Mr. Sheehan?

Mr. Vasti: Thank you Bill.

Mr. Keegan: Thank you Bill.

Mr. Vasti: Mr. Ramos, is there any way you would consider having a deck as close to grade as possible?

Mr. Ramos: I think I'm getting as close as I possibly can because I still don't want a larger step coming out the door. You open the door onto a small – I would have more than a 6 foot landing anyway and then put steps down onto it and then the steps would eat up the whole porch.

Mr. Vasti: Okay.

Mr. Ramos: Or the patio. Whatever I had there would – it would eat up the whole thing anyway.

Mr. Porath: So you don't think it's really a feasible solution?

Mr. Ramos: No.

Mr. Vasti: I have no other questions.

Chairman Wright: Any other questions from the Board? Any other questions or comments from the public at all? If not, I will make a motion.

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

Chairman Wright: The next item on the agenda is a Public Hearing for the request of Erich and Kimberly VonHein.

Request of Erich & Kimberly VonHein – App. #13-09

A variance from the requirements of the Town of Stony Point Zoning Code Chapter 215, Article VI, Section 23C – Front Yard Exceptions, located at 133 Central Highway, Stony Point, New York, for evergreens and foliage blocking line of vision at corner intersection.

Section 20.10 Block 2 Lot 59 Zone R1

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

Chairman Wright: Is the applicant present? Can you just stand up and identify yourself and just explain to us what you are doing?

**Kimberly VonHein
Erich VonHein
133 Central Highway
Stony Point, New York**

Chairman Wright: Is the testimony you are about to give truthful?

Mr. & Mrs. VonHein: Yes.

Chairman Wright: Can you just give us a quick overview of what you are here for?

Mrs. VonHein: Well we are here applying for a variance because there was a complaint about the vision on the corner of Central and Sullivan. From my understanding and looking at my records there had been a prior complaint back in 2002, I think it was, and looking in the file it was never addressed to us; it had been abated which means it had been dismissed and nothing was ever done with our trees at that point which leads me to believe that there was never an issue with my trees at that time. Not to get into too much details, but we take a lot of pride in the trees. We take care of them by ourselves. We don't have anybody come and do anything to them. They are our privacy in the front of our yard. I would also like to let you know that when I requested a copy of the prior complaint it somehow disappeared out of the file in the past week. I wanted to bring it to your attention; it is not in my file. I do have witnesses that it was there in the file; it is gone.

The most recent complaint that I would like to address comes from a tenant that rents across the street. Since they've moved in we have had nothing but problems – violation on top of violation to the point of I have 86 photos here of our property being taken by this tenant right down to pictures of my kids in a pool that we hadn't applied for a permit for because it was a \$200.00 pool that had just gone up and within 24 hours Mr. Maher filed a complaint and attached a picture from my facebook page showing my children in this pool. That's borderline stalking to me. Their concern is not about the trees. Their concern is strictly not about the safety of citizens or anybody in the neighborhood; this is a vendetta against us and it has been going on since they moved in. In my eyes he is using an abuse of his power as a Town Official. The only other complaint in my file regarding my trees in 40 years that they are there is from his girlfriend, Patricia - she claims the bushes, they are not bushes they are trees...I have school buses coming to that corner daily. I have people in and out of my street; it's not a major intersection. It does not require a light and for your benefit I have listed, and I can give each one of you a copy of approximately 22 intersections in our part of the community that are far worse than my trees which are so trimmed back at this point you can see through them. Now I am to understand that if the variance does not go through and because they are listed as trees that we would have to remove limbs 8 feet up from the ground. They are not shrubs so they would not have to be taken down 3 feet, 4 feet from the line of vision – all the technical stuff that I am not familiar with. There are barely a limb showing on my tree. There is a telephone pole that's stands forward in front of my trees that is more an obstruction of view than my evergreens.

My point is that there also was a complaint from Patricia that there had been two accidents there recently. I have filed and requested a report from the Stony Point Police Department to review any accidents that have occurred on that corner. As of this date, I am still waiting for the report. I was going to request to have this Public Hearing left open for me, but at this point the point is I've been living there 18 years and I've yet to witness an accident that was caused by my trees. The complaint that says there's "nearly misses" of accidents everyday there - the only way you are going to see if there is near misses of accidents everyday is if you are sitting across the street in your window staring at the corner 24/7.

Like I said, this is a vendetta against us. The other night I was sitting outside on my front steps with a friend of mine and as she walked by with her dog she yelled out “timber” in reference to my trees. It’s above concern for citizens. This is not about that anymore. This is a personal attack looking for satisfaction on my husband and I. This is how I want to present this to you because like I said, I’ve been here 18 years; the trees have been there longer than that. Mr. Liddy has never had to do anything with those trees. We maintain those trees. My husband, by himself, standing on ladders making sure that they are in shape with the side of the street; they don’t stick out.

The other thing I just like to also bring to you is when I went down to Town Hall into the Zoning Building to get my records, I requested from Mr. Maher to come out so I could speak to him. He came out and I asked him “Why 86 pictures of my property – why, why are you stalking us. What is this? What is this about?” He told me in reference to my trees (his exact words with witnesses – I made sure I had people standing there) “we started it”. I asked “what did we started?” He said “you asked me to no longer park my car or truck along the sides of Sullivan against our trees”. I said “yes, my husband kindly asked you not to park there because you’re so close up against the trees that it would damage the trees”. That is how we started what turned into 86 photos, constant violations against us and now they have nothing left to do, but put a complaint against my trees. That’s where we sit now and if the trees work in my favor they will find something else to do.

I really don’t have much more else to say.

Chairman Wright: Did you want to offer any evidence then that you had there? Do you want to give any of that to the Board?

Mrs. VonHein: Would you like to see the 86 photos and the rest of the intersections?

Chairman Wright: If you give them to us, they become part of the record and we have to keep them?

Mrs. VonHein: That is fine. I can get another copy. I paid for them.

Mr. Porath: Can I ask you where you got those from?

Mrs. VonHein: These were in my file. He took them, he dated each and every single one of them. These were in my file – 86 pictures up until the most present one which I believe was August and then, of course, we have the one with my kids in the pool which was downloaded. I couldn’t figure out where he got it from. He said somebody sent it to him. I know for a fact it was downloaded off my facebook page. Personally, that is stalking and harassment.

We got a permit for the pool. We did, but at this point the pool was \$200.00; the filter included. The pool was up 24 hours, not even; maybe a day and I got a violation in the mail immediately. He attacked us about our tow truck.

Mr. Fox: I am not interrupting you, but you said you had a permit for the pool and you got a violation for what?

Mrs. VonHein: After we got – we didn’t think we needed a permit for a pool that was \$200.00 that when you stand in it it comes up to your waist.

Mr. VonHein: It’s a small pool.

Mrs. VonHein: We did not know that. As soon as we got the violation, we applied for a permit. We’ve since then have taken down the pool. How they even knew my pool was in the yard; no clue. It’s not a permanent structure. Either they – obviously they googled earth pictures also pool and whatever you have in my file. If you can have all of these photos, and I’m sorry...

Chairman Wright: When you say they came from your file, what did that mean?

Mrs. VonHein: I went down to the Town Hall and requested to see my file that they keep record and complaints and I wanted to see what complaints and were put upon me by who? She told me that you need to come down the file is very large. This is what I came to.

Chairman Wright: Kathy, do we have these already...

Ms. Kivlehan: She came down to the Building Department, she asked to see her file and I had her file out a "foil request" to look at the file.

Mr. Vasti: Mrs. VonHein, do you have knowledge, or were you informed of what you need to do to mitigate this blocking line of vision? Did you get any information of what you need to do that you are in violation of presently before the Board for this request that is before us - a variance? What would make this not need a variance? What could you do to your trees to not need a variance?

Mrs. VonHein: Well I am pretty sure at this point we've done what we would have had to do – which was remove almost every single limb from the ground up. Because my understanding is that on a tree you don't take the tree down. A shrub is a different scenario, but on a tree you can leave your tree you just can't have those limbs.

Mr. Vasti: So you have...

Mrs. VonHein: Within this triangular period that they showed me which would be on the turn of the corner of the intersection.

Mr. Vasti: Have you done that already?

Mrs. VonHein: Yes. There is like – if there is three limbs left that is too many.

Mr. Vasti: So has anyone from the Town come up to re-visit your property?

Mrs. VonHein: I was told on the last hearing the closed hearing, when we put the variance in, that a site visit was going to be done on September 29, which was Sunday. Erich and I were home all and nobody appeared. There was no site – no visit.

Mr. VonHein: Nobody was there.

Mrs. VonHein: No one came.

Mr. Vasti: Well some members may have driven by.

Mrs. VonHein: They may have driven by. That is a possibility, but like I said I understand the safety thing, but this one and only complaint that is in my file comes with a vendetta; not for safety.

Mr. Vasti: What would be your next step now to have someone from the Town come back up and if the trees in their present forms, since they've been trimmed, no longer present any blockage to the line of vision, then you wouldn't need a variance.

Mrs. VonHein: Correct.

Mr. Vasti: Have you explored that possibility?

Mrs. VonHein: In what...I'm sorry. I'm not understanding – I paid \$300.00 to I guess be able to come here and...

Mr. Vasti: Well there's, you see from what I understand of your testimony there's two things here. We have what I see before me is a request for a variance, however, you've done some work to the trees in the mean time – you've trimmed the limbs, the lower limbs, so perhaps you don't need a variance at this point.

Mrs. VonHein: And that would be great. I'm not familiar with Zoning. That's the only reason why I went for a variance to keep this opened.

Mr. Vasti: So now I would think you would get in touch with the Building Department to see that the property's inspected and if a variance isn't needed then this would go away.

Mrs. VonHein: Thank you – yes that would be great.

Mr. Porath: Are you clear about the distinction because I know it can be a little confusing?

Mrs. VonHein: I believe so now. I think that the variance, what you are saying to me, is so that we don't have to touch the trees and modify them.

Mr. Porath: Right, that if you – if they were just as they were when the violation occurred and you didn't want to touch them you would ask us for a variance, but you've seemed to have trimmed them – as my fellow members said, you may not need a variance anymore.

Mrs. VonHein: There's barely any tree – you can see right through that street on that corner. And like I said there is a telephone pole that rests – here's my tree line and here's the pole. When you pull up you do see the pole.

Mr. Porath: I am very familiar with that corner. I have a family member that lives down Sullivan.

Chairman Wright: Mr. MacCartney, do you have any advice on this one?

Mr. MacCartney: I don't the Code Section in front of me so I'm not familiar with the specific terms in terms of sight line distances. Different Municipal Codes deal with it in different ways. We do have Mr. Sheehan here. Mr. Sheehan, do you know what this particular Code Section requires and prohibits in regard to sight line distances on corners. I know there is a diagram that we see often and that's attached to the Zoning Code – Sketch "A". Would you mind sharing that with the Board?

Mr. Sheehan: Sure – the Code says is shrubs or hedges cannot be more than 3 feet high from the apex of the road with the shaded area of Sketch "A". It goes, for evidence, it says any trees cannot have foliage or limbs any closer than 8 feet to the ground in the triangle area of Sketch "A".

Mrs. VonHein: So that to me would be the corner.

Chairman Wright: Yes.

Mr. MacCartney: Right, so that's within a fairly...

Mr. Sheehan: The radius distance.

Mr. MacCartney: There is a radius and the Board can look. If you are looking at the very last page of the application it seems to contain a copy of that well and familiar Sketch "A" that appears in a variety of Codes across the State. You can see the triangular area that cuts off the corner and it basically says that you are not allowed to have any foliage greater than 3 feet high within that triangular area.

Mr. Sheehan: Well actually, when you are talking about a Code with hedges you are talking about (inaudible). When you are talking about trees (inaudible). So basically what they are saying if you have trees they (inaudible – away from microphone). So to answer your questions, yes they have trimmed the trees back, but the spirit of the Code there are obviously branches that fall within the 8 feet even though they are pretty tight to the trunk of the tree. So yes they still would need a variance to keep it; otherwise, they would have to cut the branches back to the trunk within the first 8 feet. I believe the trees probably go 50, 60, 80 feet each way. So it wouldn't be this hole. Just basically on the radius of the yard.

Mrs. VonHein: It would just be this corner.

Mr. Sheehan: It would just be that corner.

Mr. Vasti: And usually when we look at a variance; in this case area variance, we have some sort of dimensionality that we are looking at and you've certainly; Bill, have clarified it very well. But, to present these folks with some sort of relief we would need to have some sort of parameters now if they maintain the tree in its present form, they've done their diligence to abide by the Code as much as they could by trimming it back while still maintaining some privacy on their property, could we put some stipulations in that it has to be kept and maintained at this level in the apex of the circle in the triangulated area and kept that way while the trees are up. This way we would have an understanding and we would have them conform within the variance; if it's so granted. I think Counselor that something we would have to work for.

Mr. MacCartney: I do have a degree of legal advice that I would like to provide the Board, but I think it would be inappropriate because it relates to certain liability issues and I would be happy to address those in Executive Session because it is legal advice. Aside from legal advice, I think what I am hearing from Mr. Sheehan is that although the limbs have been cut back, per the photographs for the application – it was cut back in terms of distance from the roadway, what the Code is more concerned with is not distance from the roadway so much as it is – if the trees that we see in the photographs are indeed within this apex in Sketch "A" that they do not appear to be conforming to the Code because the Code, as Mr. Sheehan as talked about, is if it is a tree the Code is looking for you to cut all limbs up to 8 feet so you can see under them and if it is bushes they are looking to keep the bushes low so you can see over them. This appears to be, there appear to be trees, I'm not if they are trees or shrubs, so either they need to be brought down to 3½ feet, to comply with the Code, or they need to be cut up so that you can see under them to a height of 8 feet.

Chairman Wright: Let me ask Mrs. VonHein – would you be amenable to just cutting the branches back to the Code's specifications; 8 feet and below. Because if you do that then there is no violation; you wouldn't have to be here – right?

Mrs. VonHein: And no need for a variance?

Chairman Wright: It's conforming. Otherwise what we will have to do is think about...and we will do this, it's not like we wouldn't do it, we would have to consider it, but no guarantee we would approve it. We would have to think about what are the mitigating things we could do that would still be conforming; it wouldn't be setting precedence for others. That's where we are now. But, if you were to say – you know we are going to cut it 8 feet down and we are good then there is no need for a variance.

Mr. VonHein: There are bushes in the bottom 3 feet and then cut 8 foot; is that possible? So we have some kind of privacy?

Mrs. VonHein: I see what...we already have some smaller trees in the bottom that are probably only this high in between some of them. So if we were take it up 8 feet we would still have the privacy on the lower end. I would appreciate if I could have Mr. Sheehan or whoever is in charge to actually come out and show us where we are talking about on the diagram and what exactly it is that is in accordance with the Zoning.

Chairman Wright: Is that something the Town can do? Mr. Sheehan how could they – would they take pictures and just kind of show you...I think they want to conform, but they want to understand what the parameters are before they start...

Mr. Sheehan: It is pretty simple – cut every branch down from 8 feet to the ground within the triangular area and...

Mrs. VonHein: And then the younger trees can stay where they are; they're not even 3 feet.

Mr. Sheehan: Well the way, yes the way you made that sketch out is once you get off the radius and start on the straight line you measure back 20 feet either way – you pole a line between the 25 foot. That's the shaded area where either they don't want anything or they (inaudible).

Mrs. VonHein: And that's in that triangular...

Mr. Sheehan: Correct.

Mrs. VonHein: Okay so that would be on the corner?

Mr. Sheehan: Basically, only in that triangular, in that shaded area, cannot be higher than 3 feet. Anything that, any tree in that triangle area, which is in the center of that shaded area, cannot have any foliage from the ground to 8 feet high.

Chairman Wright: It's not...

Mr. Sheehan: Now that's from the designated street line, which is not the edge of the pavement; that's the property line. So your trees that are probably basically on your property line or thereabouts.

Mr. VonHein: That's from the property; not from the street.

Mr. Sheehan: Yes, so that on the sketch is from the property line.

Mr. VonHein: That's not all the trees then?

Mr. Sheehan: When they say designated street line that is the edge of the right-of-way. So, what I am saying is that 25 feet is going to be not from road, so in reality from the road it might end up being 75 feet in each way or 50 feet in each way because your property goes to the right; like everyone's property does. Well the grass does. I shouldn't say your property does.

Mr. Porath: It sounds to me like the issue is going to come down to you need to have a good idea of what you would need to do to be within Code; maybe visually see it, has someone kind of connect the dots and then you can make a decision that probably would be as much for privacy and aesthetics to determine whether you can cut it that way or you want to pursue the variance.

Mrs. VonHein: That's what I'm asking.

Mr. Sheehan: It's pretty simple. Obviously if they are not successful in getting the variance we are going to go out there and show them what they need to do to comply and then that's that.

Mr. MacCartney: I also think it is part of the variance application it makes sense because what the Board is really getting at in this discussion is are there feasible alternatives and is the minimum variance required, both of which are things that the Board has to consider in connection with the variance application. So one option the Board has and the applicant has is to keep the Public Hearing open at the moment, allow the applicant to go back and take a look, a hard look at their property, given the discussion tonight and maybe with further consultation with the Building Department and a better understanding of what the Code provides and understand what their alternatives are; what is feasible and what's not and to see whether they can eliminate the need for any variances at all or maybe they don't have any feasible alternatives or they want to present to the Board if they don't or maybe they do and they can present the spectrum and then the Board and the applicant will have a better feeling of where we stand.

Mr. Porath: I would like to keep the discussion open until you do a little bit more determining what you may want to do.

Mrs. VonHein: I was originally going to request that.

Mr. Vasti: I will make a motion.

Mr. Porath: I will second it.

Chairman Wright: Well hang on...we are still not done with the Public Hearing because there maybe some people from the public that want to talk so I think that is something we can close out with, but Mr. and Mrs. VonHein...

Mrs. VonHein: You would like these photos, right?

Chairman Wright: Sure you can give them to...I am sorry Mr. Keegan has a question for you.

Mr. Keegan: Mr. and Mrs. VonHein, are you aware that in the public record for our Board, we have a letter dated two days ago on the 1st of October from the County of Rockland Department of Highways, which is the agency that has jurisdiction over 210 and it says "we have reviewed the information provided abovementioned item and offer the following comments for consideration: We do not favor the granting of a variance for line of sight issues and the potential impacts that may result thereof."; which means that they feel that this is a safety issue. This is not a vendetta. This is an agency that governs that road.

Mrs. VonHein: I understand that.

Mr. Keegan: They feel that this is a safety violation.

Mrs. VonHein: Can I just ask you a quick question? Being as these trees have been this way 18 years and more...

Mr. VonHein: 40 years.

Mrs. VonHein: I am there 18 years – I've never, this has never come up before. How come all of a sudden this is now a major issue? I've listed at the minimum of 22 intersections and side streets in Stony Point alone, and I gave them to Kathy, are far more damaging that I think that should be investigated, also.

Mr. Keegan: Mrs. VonHein, we are just dealing with this particular variance. We are dealing with the evidence that's presented before us. This letter is a crucial piece of evidence before us. It simply can't be ignored.

Chairman Wright: It sounds like you want to get it into compliance.

Mrs. VonHein: I do.

Chairman Wright: Once in compliance all those...

Mr. Keegan: All this goes away. Exactly, but I'm saying I want you to know that we are confronted with accepting this evidence into the record. That's my only point.

Mrs. VonHein: Okay.

Chairman Wright: So I think Mr. MacCartney's advice is good advice. Mr. Wellington Casscles you have a question?

Mr. Casscles: Is Bill still on the record? Bill, you are saying these are trees versus shrubs.

Mr. Sheehan: Correct.

Mr. Casscles: Can they be – can those objects that are there now be considered shrubs and tree if they cut the limbs off above 3 feet and 8 feet?

Mr. Sheehan: I know Counsel...what advice or legal opinion he is going to give you and that's the same...

Mrs. VonHein: I am aware also.

Mr. Sheehan: I believe that is probably the same legal opinion they gave the County employee who wrote out that GML letter. The only reason he got a letter from the County is because Central Highway is a County road and it abuts a County Road and so we have to, as the Zoning Board, has to send them a GML report. The bottom line the Code is written for safety.

Mr. Casscles: But, if they left the bottom 3 feet of limbs would you consider that a shrub, right and then from the 3 foot mark, 8 foot mark take all the limbs out.

Mr. Sheehan: I think it's either shrubs or a tree – I think one of the, let's face it if we say they cut the trees down to 3 foot high we would have to consider them shrubs. So yes they could stay at 3 foot high above the apex of the road. It doesn't mean they have to be 3 foot high from the grade on the property. That could end up being 3½ feet and it could end up being 2½ feet. It depends on the apex of the road. 3 feet approximately I should say. Normally the apex of the road is higher than the property. In this case the property is a couple of inches or whatever or I think the Board would grant them, if they felt there wasn't a safety issue, grant them a variance nothing between 3 feet and 8 feet in that apex of that triangle of the radius. Also, there might be some alternatives; obviously I am sure some of the Board members that went out there, maybe if you cut the branches on the road side and you don't have to cut them on the property side. Which might still give them privacy, but you still have a better line of sight. And the applicant is correct, if you go out there and stop at the stop pole on Sullivan and you inch out a little bit, you end up seeing the telephone pole is a line of sight issue.

Mr. VonHein: We can cut the telephone pole out too.

Mr. Sheehan: I think there might be some, a middle ground here say, where the liability lies; the Town is okay, as Dave would probably advice you. So maybe there is some relief by leaving the inside branches and not the outside branches on that corner. So to comply with the Code obviously they do comply with the Code you have to cut them to the ground. So if you went only 3 feet, my point is if you go 3 feet and cut 5 feet off and leave the top that would take...it would be okay with these people.

Mr. Casscles: So it can't be a shrub and tree at the same time?

Mr. MacCartney: To comply with the Code, you don't have to cut them to the ground you just have to cut them down 3 feet.

Mr. Sheehan: No. If it's a tree it says no branches or foliage between the ground and 8 feet.

Mr. Porath: Cut them up to 8 feet; not down to 3 feet.

Mr. Sheehan: Correct.

Chairman Wright: You can have a 5 foot gap.

Mr. Sheehan: Sure.

Mr. Porath: So ultimately, this process is going to continue, but you are going to do some homework on this and see if there is a feasible alternative that would put you in compliance so you don't need a variance. I do have two questions though that I want to ask. I am curious because maybe it's my relatively being the newest member of this Board, we don't always get letters from the County of Rockland regarding these types of matters and if we do wouldn't we be getting them on every single time...

Mr. Keegan: This is a County road.

Mr. Porath: I know, but we've done things on County roads – so I am curious as to why we got this letter for this particular project and second I liked to know if there's been any other complaints to these trees from anybody else in the Town; not just neighbors?

Mr. Sheehan: Well I can answer both questions. First question is no we never received complaints about other trees and second is the reason you got a letter from the County is because it's on a County road.

Mr. Porath: Sure.

Mr. Sheehan: If it's within 500 foot of the County road on the Zoning Board and the Planning Board; mostly the Zoning Board, in most area variances we don't have to send it to the County.

Mr. Porath: Okay. That's the distinction.

Mr. Sheehan: Normally area variances that is requested on a County road or a County park or a State park, municipal boundaries go to the County. It doesn't go to the Highway Department; it goes to the County Planning Department and they refer it if they feel it has to go to the Highway. So sometime you might, even though it went to County Planning, they might have felt over there that the variance was before you, had nothing to do with the road. So they might not even sent it to the Highway. This is a different situation.

Mr. Porath: Okay.

Mr. Sheehan: So yes it is always sent to the County if it is on a County road.

Chairman Wright: Any other questions for the VonHeins at all?

Mr. Keegan: I have one more question for Bill. Bill, in the Code, it's just my understanding if it's a tree; it's to be shaved down from 8 feet to the ground. If it's a shrub, it can come up to 3 feet and then it's leveled at that point. But, we are not mentioning trees and shrubs are we?

Mr. Sheehan: I can only go by what the Code says. The Code doesn't allow me to say well the first 3 feet is shrub and the rest of it is the tree. It's either a shrub or a tree.

Mr. Keegan: That's what I'm saying. If it's a tree, it has to be trimmed down to the ground, right?

Mr. Sheehan: I think if you are looking...

Mr. Keegan: I'm only asking for clarification?

Mr. Sheehan: If you are putting in a shrub that's 3 foot high...

Mr. Keegan: Oh yeah – I'm not saying that.

Mr. Sheehan: That's why you people are here.

Chairman Wright: And what he is suggesting – we could come up with a compromise that would require a variance that would allow to clear 3 to 8 feet of the trees. But, so far you have to look and see if you can conform and we will leave the Public Hearing open and we will come back in two weeks and if there is still some issues we will proceed with if there is a needed variance what that variance would be.

Mrs. VonHein: And of these suggestions that Mr. Sheehan had as far as taking the limbs off on the street side versus the inside of my trees, where do I stand as far as that?

Chairman Wright: Well I think...

Mrs. VonHein: That's almost just basically just about done on that area. There is really...

Mr. Porath: You may not need a variance...we are going to allow the experts to...I am sorry, I kind of jumped in, but...

Mrs. VonHein: I probably would have to go up a few more feet on the street side, (inaudible)

Mr. Porath: You might be there already or there maybe some tweaking or there may be a suggestion or a suggestive alternative that we need a variance that is acceptable. There is a couple of flavors out there.

Chairman Wright: But, it doesn't sound as though they are there right now. So I think Mr. MacCartney advise was let's leave the Public Hearing open and then you can confer with the Town. In the meantime, you will work with the Town and if you wind up being conforming and then this will just go away; if not, if we need to find some way, if there is some way we can come up with a variance we can take a look at that. We will continue the Public Hearing in the mean time and...

Mr. MacCartney: I will say this – what the Board is going to want to hear, if you do come back, if you can't get yourself into 100% compliance or you choose not to and you are asking for relief, when you come back I am certain that the Board is going to want to hear specifics about the measurements and compared to the sketch how far back, show photographs, where are you, how far in; explain to the Board, be prepared to explain to the Board where are the trees, these being the different lines that are relevant and you can present your case in a much more clear way for the Board to understand.

Mrs. VonHein: No problem.

Chairman Wright: Any questions for the VonHeins? Okay, thank you. Is there anybody else from the public, who wants to speak on this subject?

Mr. & Mrs. VonHein: Thank you.

Mr. Keegan: Kevin.

Chairman Wright: Please come forward and identify yourself.

Kevin Maher
130 Central Highway
Stony Point, New York

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

Mr. Maher: Yes, I do. I just want to make one little apology to the Board. I didn't have a chance to get a report done for myself in time for tonight so if you would just bear with me for a moment while I give you a copy.

(handing out packets)

Mr. Maher: Before we go any further, I just want to address some of the comments of Mrs. VonHein. It's a lie what she said in regard to parking by the trees.

Chairman Wright: Let me real quick – I understand...

Mr. Maher: No, it...

Chairman Wright: Let me finish. I just need to finish. I understand there are personal issues, whatever they are, what I don't want to do in this discussion here in the public, is have epitaphs back and forth about lying or anything else...

Mr. Maher: I just want to straighten it out – that I did offer to help the VonHeins. The very next day I came with a series of landscaping choices for them. I knocked on the door. Mrs. VonHein answered. I identified myself. I gave it to her and she said thank you very much. Moved on. When they had a problem with their dogs coming out through their second, they have like a gated second driveway, I made a suggestion to her why don't you put a bayonet lock on it this way they won't come out. Again, thank you very much; no problem. When they later accused me of passing something around the neighborhood about them, I had no knowledge of it. But, like I said let's put those issues aside.

There is a sight triangle issue here and I think that the Code as it is written needs a little bit more looking at in the sense that these trees are forming a line, like almost as if a "Palisade Effect". So I don't think trimming the branches may or may not address the sight triangle issue.

Chairman Wright: When you say "Palisade Effect", can you elaborate on it?

Mr. Maher: Like an old fort – when you come to that intersection and you stop at the stop line you are looking through a stack of trees. The utility pole has been there forever. You can't...

Mr. VonHein: So have the trees.

Mr. Maher: Sir, I was quiet when you talked.

Mr. VonHein: You are right.

Mr. Maher: Thank you very much. And you do have to go out into the intersection in order to see clearly down the street. You shouldn't have to do that. (inaudible) if you look in the report that I provided there, there are several charts that I show from (inaudible) and FHWA in regard to sight triangle issues. This is a danger. Granted, none of the accidents that have occurred on that street are directly related to those trees. I will admit that. That's true, but it just goes to the point that the traffic on Central Highway is dangerous and you need to eliminate any/and all dangerous situations. There were four individuals that were cited in the neighborhood; two at the intersection of Central and Washburns; one on the northeast corner, one on the

southwest corner, one at Lewis and Washburns and one at Clark and Washburns. Those four people complied by removing whatever vegetation was necessary to make the intersections visible. As a matter of fact, it was approximately, I think about a month ago now, there was an accident at the intersection of Washburns and Central. A woman tried to cross and as they say in typical police jargon, she was “t-boned” by a pick-up truck. How do I know – I met the woman at Dr. Hilley’s office and I had a conversation with her and I asked her how did it happen to you and she told me exactly - she stopped, she looked, she crawled out, the person in front of her headed out already, she figured it was clear. She stepped on the accelerator, she got hit and got pushed half way across the intersection.

We don’t need that to happen anywhere in this Town and if there are other locations in Town sure they need to be investigated, they need to be accessed and if necessary violations issued. No doubt about it, but how are we going to know it unless citizens step up to the plate and say “Hey, there is a problem here. Come and take a look at it.” Same thing with drainage when I respond to those issues as the Town Engineer. I don’t know about it until, for example, you call me up Mr. Wright and say “Kevin, there is a problem in my backyard caused by the neighbor behind me.” I come and take a look at it. I don’t know about it until you tell me and we ask the people to put these complains in writing because again when you get into a scenario like this we want to know is the complaint valid, who complained, why did they complain, is there a real situation.

When you look at the stuff that I compiled, one of the most glaring things that I saw was – you are supposed to make an application to the Z.B.A. You are supposed to show the variance condition. There is no variance condition shown. The application itself was fraught with errors. The VonHeins claim they’ve been living here for 19 years or 18 years; I am sure they knew they were living on Central Highway, why did they check “no” for any County roadway on their application. I don’t think they’ve demonstrated adequately the conditions that are necessary for a variance, but if, and I will concede at this point, if they can meet that criteria with the trees that I leave up to the Board, but I still want to make it very clear that those trees, the way in which they are planted in the arc and the shape, they are still an obstruction and you do have as has been introduced in evidence today, you do have a letter from the County stating it’s dangerous. So I don’t think this is something that the Town needs to take lightly because if we were to grant the variance and if somebody comes back or if we allow the trees to remain, there is still a sight line problem and somebody gets into an accident, I wouldn’t want to be the attorney trying to defend the Town for that one because they could very easily pin it on us to say if those trees weren’t there maybe my client would of seen clearly through the intersection.

Again, when you look at the analysis I did for stopping sight distances, those are based on perfect conditions. You never have perfect conditions in life – foggy night, rainy night, light snow during the day time, maybe somebody drove by and now there is oil on the pavement – the vehicle goes sliding even when you try to hit the brakes. Just take a look – at 30 m.p.h. you are talking about somebody traveling 44 feet per second. The reaction time for an average human is 2 ½ seconds before they hit the brakes. So how far have they traveled; close to probably 100 feet. When you get up to 40 m.p.h., which is I hate to say is probably the typical speed out there, you are looking at 60 feet per second. That’s significant. This is not something that this Board needs to take lightly. You need to take a good hard look at this and that’s what I am asking this Board to do. That’s why I objected to this variance because I believe it is not warranted and I am not doing this as the VonHeins claim as a vendetta.

If I had a vendetta against the VonHeins, a lot more would have been done. I am not here to blame them for the egging of my truck, or the egging of the house that I live in, or the broken glass and beer bottles that were thrown on my property – there are police reports covering all three of them. Of course, I can’t prove they did it, but the Police will tell you, “They are the only ones you are having a problem with Kevin, right?” And it all stemmed from asking them politely please, back in 2011, please, we went over and begged them to stop with the fireworks because my dog was having an epileptic fit. The response wasn’t kind at best and as far as the 2002 violation referred to by Mrs. VonHein, I looked at the file too. That 2002, violation was for

parking his truck in his driveway which he was cited for again in November 2012 and that's what spawned the reaction for the trees. The reaction that they did coming after me.

So that's where it all stems from. There is clear evidence here that there is a problem at that intersection that needs to be addressed before there is an accident. People do not stop and wait there. They pull out and they start sliding out of that intersection cause they need to in order to get a clear line of sight up the street. If those trees weren't there, there wouldn't be an intersection problem. A utility pole does not obstruct your vision. That's childish to even say something like that. A reasonable man wouldn't even say that; that's obvious.

So I think this Board...I think it's a good idea to leave this public hearing open and have another look at the site. Yes, he has been cutting the branches back, but if you look at the photographs; I am sure the County sent you photographs, there ain't no way – for them to issue that kind of letter to you that there is a problem there that is something you should seriously address. I don't think...I think they see it the way I see it that no matter what they do there those trees are a problem. Thank you.

Chairman Wright: Any questions for Mr. Maher or anything?

Mr. VonHein: Those trees have been up for about 40 years and nobody has ever had a problem with them since you moved in. Is that right?

Mr. Maher: Not that I'm aware of.

(too many people talking (yelling) at one time)

Mr. Maher: This is what I deal with on a regular basis.

Mrs. VonHein: Are you kidding?

Chairman Wright: Hang on, hang on, hang on. We are not going there tonight here. You guys...

(Mr. Maher and VonHeins talking at the same time)

Chairman Wright: I'm looking for evidence; I'm looking for if there are questions out there. I want to bring them out in the Public Hearing, but I think this has to be kept civil here tonight.

Mr. Maher: Like I said, I think it is a great idea that we give them the opportunity to comply, but if they can't comply, if the line of the sight is still obstructed with the trees still there with the branches trimmed, I think they should be removed. I think there is no question about that. I think that is going to be clearly demonstrated once they try to comply with the 8 foot trimming of the trees. And if it is the opinion of the Board at that time, I will accept it.

Chairman Wright: Any questions for Mr. Maher? Anybody else want to offer any testimony or have any questions? If you could, just come up and identify yourself. Thank you, Mr. Maher.

Francesca Castaldo
5 Dunderberg Drive
Tomkins Cove, New York

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

Ms. Castaldo: Yes.

Chairman Wright: Is this in relation to this particular case here?

Ms. Castaldo: Yes.

Chairman Wright: Okay.

Ms. Castaldo: I particularly, I'm at this house maybe if not once more than once a week. I park on the side and the trees are not – they don't really bother anybody. I pull out all the time at the stop sign and I have no problem. The trees aren't even in my way because I am here – the trees are here, the stop sign is up further. So there's no...it's clear vision. You'd have to be a pretty bad driver to not...

Chairman Wright: So let me just do this. If anybody else is going to testify, I urge you please don't categorize anybody in any way that's to be...just please give us as direct testimony as you can. I would appreciate it.

Ms. Castaldo: I am just saying it is a clear view. There's no...the trees were never in my way and I am a little person. If I don't have a problem, I don't see why anybody else would and I've never seen people just fly through.

Chairman Wright: Thank you.

Ms. Castaldo: You're welcome.

Chairman Wright: Does anybody else have questions for Ms. Castaldo? Thank you. Does anybody else have anything else to say? Please come up and identify yourself and state your address.

Lisa Rose
405 Call Hollow Road
Stony Point, New York

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

Ms. Rose: Yes.

Chairman Wright: And it pertains to this particular case?

Ms. Rose: Yes. I frequently travel that road also and...

Chairman Wright: That road being Central Highway?

Ms. Rose: Yes, Central Highway and I do believe that the telephone pole is more of a problem than the trees itself. Personally, the trees don't even affect your vision when you're going to pull on the street and I do feel like if you guys are going to like look at these trees that there are other trees as well that I have a problem with. For instance, when you are pulling out of the shrine – there are trees there that I have to pull directly onto the street, which is...

Chairman Wright: If I may – I understand that there we've come to this a lot of times, there is a violation here, violations all over the place – what we are really trying to do and the only thing we can really look at tonight are the trees...

Ms. Rose: This exact case.

Mr. Porath: We are not the "Tree Police". Like we respond to...

Ms. Rose: No – I know you guys aren't. I feel like other people think they are, but it's alright.

Mr. Porath: What we respond to are variance requests or something like that. So, I guess what's relevant is the same thing. In your opinion is - clearly what? I guess is what we are asking. You've already stated that that was...

Ms. Rose: Well – then my opinion is if we fix the trees what can we do about the telephone pole? That is still going to be a problem.

Chairman Wright: Okay. Thank you. Any questions? Are there any other questions from the public on this? We will continue to keep this...

Mrs. VonHein: Can I just get up one more time? I just want to reference my stop sign.

Chairman Wright: Yes, ma'am. This is just direct testimony?

Mrs. VonHein: This is direct testimony. I am not here to cause a problem. When you do come out of Sullivan and you are approaching Central Highway, here are the trees. This stop sign sits all the way back here. Without any doubt you cannot possibly stop at that stop sign and see what you are doing. Trees or no trees. You need to go over that stop sign and come out and look both ways. In reference to Washburns and Central where Mr. Maher said that the trees were conformed to the Code and also Washburns and Lewis; yes they did indeed take their shrubs down. When you pull out onto either one of those intersections, and I have personally done it to see if it made a difference what they have done, you still need to come out onto Central before you pull out because their trees come across and then they are tall after it. There is no way that that amount, whatever that distance is, on both of those corners allows you and specifically on Lewis and Washburns you need to come out and look. That's the point I am trying to make here. So we are not here to...what we are trying to do is obviously abide by the Code and the Zoning Laws and whatever have you and we've discussed that. We will work on the trees so maybe we don't need the variance as we've discussed. Cutting down my trees is definitely not an option. That's not even in the Code and I just want to verify that that's not where we are going with this as far as my trees are concerned. And the other two corners that have been conformed to the Code if you are to take a ride you will note you do have to pass whether it's the stop sign or...as a matter of fact I think on Lewis and Washburns the stop sign is closer to the end of the road...if I'm not mistaken so you do come all the way to the end of the road to look. In my case, the stop sign is several feet off of the road so no matter what way you look at it if you are stopping at the stop sign it's useless. You need to go out into the road – either way. I just wanted to make that clear. Thank you.

Chairman Wright: So we will carry this Public Hearing into our next meeting.

*****MOTION: Mr. Keegan made a motion to keep the Public Hearing open; seconded by Mr. Fox. Hearing all in favor; the motion was carried.**

Chairman Wright: So the next to last item on the agenda was a continued discussion on the request of Brian and Tara Horowitz.

Request of Brian & Tara Horowitz – App. #13-06

A variance from the requirements of the Town of Stony Point Zoning Code Chapter 215, Article VIII, Section 40 – Recreational Vehicle, required 30 feet, provided 24, at 117 Jay Street, Stony Point, New York, for a recreational vehicle parked in front yard/setback.

Section 15.04 Block 1 Lot 22 Zone R1

Chairman Wright: Do I have a motion to...well we will just...we don't need a motion to discuss this, do we Mr. MacCartney?

Mr. MacCartney: No. It's just discussion at an open meeting.

Chairman Wright: So I think we left this off as – Mr. Morlang actually, as we were coming out of Executive Session had bought up a point.

Mr. MacCartney: I just caution not to reveal things that were discussed in Executive Session; specifically, but with that caution go ahead.

Chairman Wright: And he's not here, so I'm not sure if we can continue that portion of the discussion over since it was a concern that he had had so unless there are other items that you want to discuss on that particular application, if not then I think we can probably...yes Mr. Novak...

Mr. Novak: I guess there were a few things discussed after the session was closed.

Chairman Wright: Sure, come on up. If you can just identify yourself.

**Robert Novak
119 Jay Street
Stony Point, New York**

Chairman Wright: The testimony you are about to give is truthful.

Mr. Novak: Yes. There was other things discussed two weeks ago when the session or the discussion was closed and we left, so I don't know if that's...we missed some things discussed so I would like to be brought up-to-date because my wife checked the minutes and...

Chairman Wright: Sure – what we did was we went, we went as we normally do, we closed the Public Hearing and went into a discussion about it. There was one item that we needed an answer to and what the rules allow you to do is to re-open the Public Hearing, which we did for the purposes of asking one question and then we closed the hearing back down again. The rest is in the...and all that was in the minutes. If you read the minutes, there wasn't anything that we did discussed that wasn't covered in it.

Mr. Novak: Okay, there was just a discussion of a fence and being 6 foot included...that's not in the request for the variance and a 6 foot fence would really...it's...you can call it a setback you can call it anything you want...

Chairman Wright: So let's do this – we are not part of the Public Hearing anymore. So I'm just answering the question. I can't take anymore testimony, but I want...you had a question so I just wanna kind of answer it.

Mr. Novak: Okay.

Chairman Wright: So was there anything else that we wanted to...

Mr. Fox: The only thing that we were looking for is an answer on the height of the air conditioner and I think we did get that.

Mr. Porath: We got that answer.

Mr. Fox: So we know what the maximum height on that was.

Mr. Casscles: I have no further discussion.

Chairman Wright: So the other item, I guess we wanted to go into Executive Session on...

Mr. Porath: I am sorry are we leaving the Public Hearing continued to leave it open until Mr. Morlang is back.

Chairman Wright: There is no Public Hearing.

Mr. Porath: This discussion is over. Are we concluding the discussion; there is no discussion to be held anymore on this topic.

Chairman Wright: Unless you have something you want to bring up.

Mr. MacCartney: If I may, these are your options – If anyone has a resolution, a motion to make in regard to resolution you can make that with or without Mr. Morlang here; so you can do that. There's no requirement that you make a decision tonight. You have 62 days from the date that the Public Hearing was closed to render a decision. The Board can have an open discussion if it wishes now without Mr. Morlang here. It can continue – it doesn't have to do that. It can continue. It just has to be on the agenda for the next meeting so as long – I haven't done the math so long as that is within 62 days of the closing of the Public Hearing. I am certain that it is. It is probably less than 30. The Board can have a continued discussion and Mr. Morlang can be present.

Mr. Casscles: I make a motion they leave the discussion portion open so we can hear Mr. Morlang's...

*****MOTION: Mr. Casscles made a motion that we leave the discussion open; seconded by Mr. Fox. Hearing all in favor; the motion was carried.**

Chairman Wright: The other item is adoption of the minutes of September 19, 2013.

*****MOTION: Mr. Porath made a motion to accept the minutes of September 19, 2013; seconded by Mr. Casscles. Hearing all in favor; the motion was carried.**

Mr. MacCartney: The only other issue, Mr. Chairman if you wish on the VonHein application I did mention that I have legal advice that I can provide to you – that I can provide that to you in Executive Session tonight if you would like. I can provide it in Executive Session next time if you would like or it's up to you.

Mr. Fox: Mr. Chairman, if I may – they may still end up conforming – is that a reality to them going back and looking at what they need to do.

Chairman Wright: Yes.

Mr. Fox: So do we have to do this?

Mr. Casscles: I would.

Chairman Wright: So you want to go into Executive Session?

Mr. Casscles: This way we have it; it's done. If we don't need it...

Mr. MacCartney: It will be in regard to legal advice for liability issues that may or may not arise out of this application.

Chairman Wright: For the VonHeins.

Mr. MacCartney: Correct.

*****MOTION: Mr. Casscles made a motion at 8:18 PM to go into Executive Session, pending litigation; seconded by Mr. Fox. Hearing all in favor, the motion was carried.**

Chairman Wright: So we are going into Executive Session.

*****MOTION:** Mr. Porath made a motion at 8:39 PM to reconvene to regular Zoning Board of Appeals meeting; seconded by Mr. Keegan. Hearing all in favor; the motion was carried.

*****MOTION:** Chairman Wright made a motion to adjourn the meeting of October 3, 2013; seconded by Mr. Porath. Hearing all in favor; the motion was carried.

Respectfully submitted,

Kathleen Kivlehan
Secretary
Zoning Board of Appeals