

**TOWN OF STONY POINT  
Zoning Board of Appeals  
Minutes October 17, 2013**

**PRESENT:**

Mr. Morlang  
Mr. Keegan  
Mr. Casscles  
Mr. Vasti, Acting Chairman  
Mr. Fox  
Mr. Porath (absent)

**ALSO PRESENT:**

William Sheehan, Building Inspector  
Dave MacCartney, Attorney

Chairman Wright (absent)

**Acting Chairman Vasti:** 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.

Tonight's agenda, October 17, 2013 - 18<sup>th</sup> Agenda, we have a new application; the request of Joleen and Martin Murray.

**Request of Joleen & Martin Murray – App. #13-10**

A variance from the requirements of the Town of Stony Point Zoning Code Chapter 215, Article VIII, Section 40 – Storage of RV in front yard/setback, located at 83 Tomkins Avenue, Stony Point, New York, for an RV parked in the front yard/setback.

**Section 15.19                      Block 3                      Lot 30                      Zone R1**

**\*\*\*MOTION:** Mr. Casscles made a motion to place Application #13-10 on the November 7, 2013, agenda; seconded by Mr. Fox. Hearing all in favor; the motion was carried.

**Acting Chairman Vasti:** The second item on the agenda is the request of Kara Keahon.

**Request of Kara Keahon – App. # 13-11**

A variance from the requirements of the Town of Stony Point Zoning Code Chapter 215, Article IV, Section 12F – Proposed Use Variance does not meet the definition of Home Occupation, located at 1 Lisa Denise Court, Stony Point, New York, for a second kitchen.

**Section 20.07                      Block 2                      Lot 8.1                      Zone R1**

**\*\*\*MOTION:** Mr. Casscles made a motion to place Application #13-11 on the November 7, 2013 agenda; seconded by Mr. Morlang. Hearing all in favor; the motion was carried.

**Acting Chairman Vasti:** We should schedule a site visit for October 27, 2013.

**Acting Chairman Vasti:** Next we have a decision for 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**

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

In the Matter of Application #13-07 of Eric Ramos for 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, for the construction, maintenance and use of an open air rear deck located at 181 Route 210, Stony Point, New York designated on the Tax Map as Section 15.03, Block 1, Lot 46.

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

The applicant represented himself and the following documents were placed into the record and duly considered:

Application; Building Inspector's denial letter dated 8/26/13; Survey; Plans, original and revised; October 1, 2013 letter from County of Rockland Department of Highways; September 12, 2013 letter from County of Rockland Department of Planning.

Additionally, members of the Zoning Board of Appeals personally visited the applicant's property and viewed it and the neighboring properties on September 15, 2013.

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

WHEREAS, a public hearing was held on October 3, 2013, and the testimony of the following persons was duly considered: Eric Ramos and William Sheehan, Building Inspector.

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

The applicant is the owner of the subject parcel which contains a pre-existing, nonconforming single-family dwelling. The lot is 84.68 feet wide, and the Stony Point Zoning Code requires one side yard to be at least 15 feet wide and requires a total side yard of 28.75 feet. The applicant desires to improve the rear egress down into his backyard from the main dwelling area of the home. He desires to construct an open-air deck on the north side of the home consisting of 2 tiers with the lower tier also extending into the backyard. The upper tier would be 14' x 34' and the lower tier would be 10' x 16'. The configuration and construction of the home is such that a deck cannot feasibly be added to the property in any other location. A variance is required because the deck would come within 5'5" at its closest point to the northern property line. Because the southern side of the home comes to within 9.1 feet of that property line, a variance is required for the difference between the 15 foot minimum side yard and the 9.1 feet provided on the southern side. Additionally, a variance is also required for total side yard, as 28.75 feet is required but the applicant only provides a total of 14.5 feet. The deck will be an open-air deck and will not be enclosed.

The applicant represented to the Board that the area where the deck is to be constructed is not burdened by any easements and is not subject to any rights of the adjoining property owner. The applicant provided proof to the Board that the adjoining property owner was served with the notice of public hearing and the adjoining property owner did not appear or submit any documentation or communication of any kind in opposition to the application. No opposition to the application was submitted.

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

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

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

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

There is no evidence before the Board that the benefit sought could be achieved through any other method, given the construction of the home and the configuration of the property.

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

The variance is substantial.

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

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

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

The alleged difficulty was self created.

NOW, THEREFORE, BE IT RESOLVED, that the application for a variance as set forth above for the construction, maintenance and use of an open air deck is hereby approved on the condition that the deck shall not be enclosed and shall be limited to the dimensions set forth in the application and plans submitted as recited above, and on the condition that the applicant comply with the requirements of the October 1, 2013 letter from the County of Rockland Department of Highways to the extent same is applicable, 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; Acting Chairman Vasti, yes; Mr. Fox, yes; Mr. Porath, absent; and Chairman Wright, absent.**

**Acting Chairman Vasti:** Next on the agenda we have a discussion/decision for 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**

**Acting Chairman Vasti:** Any members of the Board have anything they wanted to discuss?

**Mr. Morlang:** Mr. Chairman, I have studied the proposal, looked it over. I see very little difference from the previous proposal which was turned down by us and in answering the questions that we are required to answer I see several that we can't answer satisfactorily and still approve the document.

**Acting Chairman Vasti:** Okay, any other members of the Board?

**Mr. Keegan:** I would like to make a motion that in view of the nature of this application that we wait until all the members of the Board are here because obviously this is going to – in view of what happened tonight, this is going to have an impact on the Town. I think that all the members of the Board should be here when we vote on this.

**Acting Chairman Vasti:** Counselor, your opinion on that motion?

**Mr. MacCartney:** You have 62 days to issue a decision from the date the Public Hearing was closed. I haven't done the math on it...

**Ms. Kivlehan:** It's November 20.

**Mr. MacCartney:** So you have time if you would like to do that and put it over so the two members who are not here tonight can participate in the discussion. The next meeting, I believe, is on November 7<sup>th</sup>?

**Ms. Kivlehan:** You will have to make a decision on November 7<sup>th</sup> as the next meeting is after the deadline.

**Acting Chairman Vasti:** Okay, we have a motion to adjourn this until all members are present. Do I have a second?

**Mr. MacCartney:** Just as a matter of procedure. You don't need a motion to take no action. Basically, what the Board is looking to do is – if somebody has a motion that they would like to make and offer a resolution then you can make that motion. If nobody makes a motion for a resolution to either approve or deny, then it simply carries forward to the next meeting as a matter of course for a discussion or for a decision at that time. But, all members would know that that would be the last meeting, regularly scheduled meeting, that the Board would have to render a decision. In all likelihood the Board would have to continue discussion and come to a decision one way or the other during that meeting.

**Mr. Keegan:** Mr. Chairman, can we ask Kathy to make sure that all the members of the Board are aware of that next meeting?

**Acting Chairman Vasti:** We presently do have a resolution; Mr. Keegan, and all we would need is someone to second the motion for presenting the resolution. So does anyone want to make the motion that they have a resolution?

**Mr. Casscles:** I do. I would like to offer the resolution.

**Acting Chairman Vasti:** Okay, Mr. Casscles has offered a resolution.

**\*\*\*MOTION:** Mr. Casscles offered the following resolution; with NO second.

**Acting Chairman Vasti:** Being that there is "NO SECOND"; then this will carry over to the next meeting.

**Mr. Keegan:** Mr. Chairman can we ask the secretary to please notify all the Board members that the next meeting will be the last meeting at which the vote can be taken so if they can't be here they can't be here, but at least they are aware that this is the situation.

**Acting Chairman Vasti:** Mr. Keegan, we will ask the secretary to note that.

**Acting Chairman Vasti:** The next item on the agenda is the continued 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**

**Acting Chairman Vasti:** Is anyone here representing the applicant? Would you please come up and state your name.

**Kimberly VonHein**

**Acting Chairman Vasti:** Kimberly, do you swear that the testimony you are about to give is truthful?

**Ms. VonHein:** Yes.

**Acting Chairman Vasti:** What do you have to tell the Board this evening?

**Ms. VonHein:** We have withdrawn our application or would like to withdraw the application for the variance. We took a look at the Zoning Code, cut the limbs back according to what the standards are for trees and I am not sure if they've been looked at, checked out or anything of the sort, but I believe that we are now up to Code.

**Acting Chairman Vasti:** Mr. Sheehan, good evening. Have you had an opportunity to look at the property and does the adjustments and cutting of the foliage meet the requirements as set forth in the Code?

**Mr. Sheehan:** Well it really doesn't matter since she is withdrawing her application.

**Acting Chairman Vasti:** Okay.

**Mr. Sheehan:** I don't if you want to listen to anybody that might want to speak from the audience to see if there is some concerns that maybe they could address.

**Acting Chairman Vasti:** Well being that she has withdrawn her application then...

**Mr. MacCartney:** Can I just speak of the procedures under these circumstances – as I understand it right now, there was a violation that was issued by the Building Department and that is on for court on the violation in Justice Court I think the first week in November; if I am not mistaken.

**Ms. VonHein:** Yes.

**Mr. MacCartney:** The filing of the application for a variance automatically "stay" – stops the prosecution of the violation. Withdrawing the application before the Zoning Board has the effect of lifting the "stay" so the prosecution will go forward unless the Building Department withdraws the violation. So that would be the Board, this Board, really doesn't have any much to say if a person is entitled to withdraw their application. Under these circumstances I think if they are going to withdraw it they can withdraw it. It is up to the applicant.

**Acting Chairman Vasti:** So you are withdrawing your application?

**Ms. VonHein**: Yes.

**Acting Chairman Vasti**: Members of the Board, is there a motion to close the Public Hearing?

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

**Acting Chairman Vasti**: Other business – we have the minutes of October 3, 2013.

**\*\*\*MOTION**: Mr. Keegan made a motion to accept the minutes of October 3, 2013; seconded by Mr. Fox. Hearing all in favor; the motion was carried.

**\*\*\*MOTION**: Mr. Morlang made a motion to adjourn the meeting of October 17, 2013; seconded by Mr. Fox. Hearing all in favor; the motion was carried.

Respectfully submitted,

Kathleen Kivlehan  
Secretary  
Zoning Board of Appeals