

**TOWN OF STONY POINT
Zoning Board of Appeals
Minutes November 7, 2013**

PRESENT:

Mr. Morlang
Mr. Keegan
Mr. Casscles
Mr. Vasti
Mr. Fox
Mr. Porath

ALSO PRESENT:

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.

We have a few items on the agenda and I am just going to move it around a little bit just so we can make best use of our time. The first thing I want to bring attention to is there was a request from 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

Chairman Wright: She has withdrawn her application and I just want this to reflect the record that we have received the application to withdraw it.

The second item on the agenda is a 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

Chairman Wright: We had a – this was open for discussion so I think there was maybe some residual business if anybody wanted to bring it up. This is the time, otherwise I am going to have Mr. Casscles go ahead and read the motion. Was there any other – anything else the Committee wanted to discuss on this application? If not...

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

In the Matter of Application #13-06, of Brian M. Horowitz and Tara Horowitz for a variance from the requirements of Chapter 215, Article VIII, Section 40 of the Stony Point Zoning Code, to permit the storage and parking of a recreational vehicle extending 6 feet beyond the required front setback (required 30 feet, provided 24) on the premises located at 117 Jay Street in the Town of Stony Point, designated on the Tax Map as Section 15.04, Block 1, Lot 22.

The premises which are the subject of this application are located at or near the intersection of Jay Street and Chestnut Street in an RR Zoning District.

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

Application and all attachments including narrative, photographs, diagrams, PowerPoint slides, Building Department denial letter dated August 14, 2013, survey, and June 17, 2010 ZBA decision on prior ZBA Application Number 10-06; "Depositions" submitted by Applicants signed by Patricia Keenan, Gerald Lambert, Robert O'Leary, and Jodi Taylor; 18 photographs submitted by Cheryl Novak at the public hearing.

Additionally, members of the Zoning Board of Appeals personally visited the Applicants' 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 September 19, 2013 and the testimony of the following persons was considered: Applicant, Brian M. Horowitz; Cheryl Novak; Joseph Cooney; Robert Novak; and Jodi Taylor, and

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

The Applicants own the subject premises, which consist of approximately .28 acres improved with a single family one and one half story dwelling constructed in 1951. The home is serviced by a driveway located in the front yard on the north side of the premises running directly from Jay Street to the home. The Applicants' driveway is located several feet from the northern property line beyond which lies property owned and occupied by Robert and Cheryl Novak, who oppose the application.

Chapter 215, Article VIII, Section 40 of the Stony Point Zoning Code (the "Code") permits one RV less than 35 feet to be parked on a residential lot, but requires it to be behind the front setback line of any required yard. In 2010, the Applicant purchased a 33 foot Recreational Vehicle (RV), which the Code permits to be parked in a front yard throughout the Town. However, the Applicant's RV was 33 feet long and 12.5 feet high and extended 10 feet into the prohibited front yard setback. Accordingly, the Applicant sought a 10 foot variance from this Board at that time to park the said 33 foot RV in the driveway. The Applicant stated at the time that he was requesting permission to park the RV in the driveway because he could not locate an appropriately secure storage facility. That Application No. 10-06 was denied for the reasons set forth in a decision dated June 17, 2010.

Following the said denial, the Applicants' RV was stolen on August 1, 2013 from its storage location at the Stony Point Bay Marina. The Applicants now plan to purchase a new RV substantially smaller than the one which was stolen (and which had been the subject of the prior application), and again wish to park it in their driveway with a security system to be installed rather than risking losing another RV to theft at a remote location. More particularly, the Applicants now propose to acquire a new RV only 25 feet long and 8'7" high. Thus, the new RV would be 8 feet shorter in length and approximately 4 feet shorter in height than the RV which was the subject of the prior application.

If parked in the Applicants' driveway, the new RV would still extend 6 feet into the prohibited front setback. Accordingly, a 6 foot variance from the Code is requested to permit the Applicants to park the new RV in their driveway.

The new RV and new variance application is substantially different than the prior RV and related application which was denied in 2010, in several ways. Most importantly, the reduced height and length of the RV represent a material change. The northern property line of the Applicants' property contains a retaining wall, ornamental grass, and a privacy fence, all of which combine to provide visual screening which block the entire length of the new, smaller RV from view from the north. The original 33 foot long, 12'6" high RV extended up above that visual screening over the course of its 33 foot length, including all 10 feet that were in the prohibited front yard setback and, accordingly, was fully visible from vantage points north of the Applicants' property.

In contrast, the Applicants have now provided diagrams and photographic visual representations of the height of the new RV in relation to the adjacent fence and ornamental grass. The new RV, being only 8'7" high, is well below the height of the existing ornamental grass and is at or below the height of the privacy fence. In other words, visibility of the new RV from north of the property line is substantially reduced, if not eliminated entirely, when compared to the RV involved in the original application. Additionally, the substantially reduced height and length of the new RV compared to the original RV mitigates the visual impact of the new RV in the driveway from vantage points south of the driveway.

The Applicants seek relief from the Board in regard to this new application because the existing home provides no feasible alternative location to park the RV on the premises, and there is no proof presented of any smaller RV available which would not require a variance. The Applicants are thus applying for the minimum possible variance to permit them the benefit sought, given the unique configuration of their home and property.

Various individuals, including the next-door neighbors on the northern side (Mr. and Mrs. Novak) and a neighbor to the south of the Applicants (Mr. Cooney), appeared at the hearing and voiced objections to the application. In contrast to the prior application which involved a much larger RV which extended above the adjacent screening and ten feet into the prohibited front set back, their objections to this particular application were primarily focused on whether any RVs should be permitted in the front driveways in the Town at all. It is important to note that the Code specifically allows RVs up to 35 feet in length to be parked in a property owner's driveway in front of his/her home. Accordingly, here, the Board is not confronted with whether RVs should be permitted in front driveways; that is not an issue this board has jurisdiction to consider. Rather, before the Board is only the specific 6 feet in length by which the new 8'7" high RV would extend into the front yard setback. The Board must, therefore, narrowly focus on the particular impact, if any, of the last 6 feet of this particular RV on this particular property. None of the neighbors presented evidence to the Board of any particular negative impact involving that 6 foot portion of the proposed RV as opposed to their general objections to the RV simply being in the driveway as a whole.

WHEREAS, this Board has examined the written documentation and reviewed the testimony with respect to the Applicants' 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 Applicants if the variance is granted outweighs any the 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":

The Board finds that provided certain conditions are imposed and followed as set forth below, a grant of the variance requested would not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. In contrast with the prior application, the variance sought in this application for a much smaller RV in the dimensions as limited by the application would not present any visual obstruction. It is at or below the height

of the adjacent privacy fence and ornamental grass screening. The Applicants also agreed during the public hearing that the air conditioning unit on the RV shall not be no higher than 12 inches and shall not be left running at any time while the RV is in the driveway, so there will be no noise impact from the RV either.

(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 was no evidence presented at the public hearing of any other feasible method by which the Applicants could achieve the benefit sought. There is no other place on the property where the RV could be parked and there is no evidence before the Board of any available RVs smaller than the one for which a variance is sought and which would not also require a variance.

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

The variance is 40% less than the one sought in the previous application, and although 6 feet is still a substantial variance, it is mitigated by the visual screening along the northern property line.

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

There was no evidence presented at the public hearing of any adverse effect or impact the final 6 feet of this RV would have on the physical or environmental conditions of the neighborhood, particularly given the adjacent visual screening.

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

The difficulty was self-created in the sense that the Applicants are aware of the prohibition against parking the RV beyond the front yard setback, but the particular configuration of the property and home is a mitigating factor as there is no other place they could park an RV on the premises and no evidence of the possibility of any smaller RV that would comply with the Code.

NOW, THEREFORE, BE IT RESOLVED, that the application for a variance from the requirements of Chapter 215, Article VIII, Section 40 of the Stony Point Zoning Code, to permit the storage and parking of a recreational vehicle extending 6 feet beyond the front setback line (required 30 feet, provided 24) on the premises located at 117 Jay Street in the Town of Stony Point, designated on the Tax Map as Section 15.04, Block 1, Lot 22 be and the same hereby is granted on the following conditions:

1. The RV shall be parked as close as possible to the Applicants’ house;
2. The Applicants shall be strictly limited to the dimensions sought in the application, and no more, such that any RV parked in the driveway shall not extend more than 6 feet into the prohibited front yard setback and no RV shall be permitted which is greater in height than 8 feet 7 inches tall, plus one air conditioning unit (“AC Unit”) no more than 12” high;
3. The RV shall be permitted to have the one AC Unit on its roof no great than 12” in height, on the condition that the AC Unit shall not be in operation at any time while the RV is on the Applicants’ property and that the RV shall be parked in such a way that the AC Unit shall not be within the prohibited front yard setback;
4. The Applicants shall be required to permanently maintain visual screening between the RV and the neighboring property to the north, at least as high as the highest point of the parked RV including the AC Unit.
5. The foregoing conditions shall not be construed to prohibit the operation of the refrigerator in the RV while the RV is parked on the property.

Chairman Wright: Does anybody have any additions or changes to the motion?

Mr. Casscles: I would like to add one more condition.

Chairman Wright: Okay.

Mr. Casscles: It would be condition #5 –

Chairman Wright: So you are adding a motion to add another condition.

Mr. Casscles: Yes, that it would state that while the RV is parked in the yard that the refrigerator could be run – because a lot of times you have to stock the refrigerator before you go away with it and they are very quiet anyway.

Chairman Wright: So I have a second on the amendment...

Mr. Keegan: I would like to add one more thing.

Chairman Wright: Another...

Mr. Keegan: No, not another amendment; just a piece of information.

Chairman Wright: There is no public hearing so we cannot...

Mr. Keegan: No, I understand that. That the 6 foot variance, 3 feet of that is hitch. So it is technically in the 6 foot zone. But, it is the hitch for the van and not part of the RV – not the structural part of the RV.

Chairman Wright: Thank you. So do I have a second on Mr. Casscles amendment?

*****MOTION:** Mr. Casscles made a motion to amend the resolution and add a 5th restriction/qualification; seconded by Mr. Vasti. All in favor; the motion was carried.

Upon roll call, the vote was as follows: Mr. Morlang, no; Mr. Keegan, yes; Mr. Casscles, yes; Mr. Vasti, yes; Mr. Fox, yes; Mr. Porath, yes; and Chairman Wright, yes.

Chairman Wright: So the next item of business is a Public Hearing for the request of Joleen & 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:** Chairman Wright made a motion to open the Public Hearing to the public; seconded by Mr. Casscles. All in favor; the motion was carried.

Chairman Wright: Is the applicant present?

Unidentified Voice: Yes.

Chairman Wright: Can you please come forward and identify yourself? Please both state your name and your address.

Joleen Murray
83 Tomkins Avenue
Stony Point, New York

Martin Murray
83 Tomkins Avenue
Stony Point, New York

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

Mr. & Mrs. Murray: Yes.

Chairman Wright: If you want to give us just some background on the application?

Mrs. Murray: Someone complained about the camper and we filed for a variance to be able to park it in front because we have no access to our side and back yard.

Chairman Wright: I will go to the Board if you have any questions?

Mr. Casscles: The application is for just the camping trailer?

Mr. Murray: Yes.

Mr. Casscles: I see that there is also a boat.

Mr. Murray: No boat.

Mr. Casscles: Is that another property?

Mrs. Murray: The boat was sold and it stayed on our property, but it is gone now. We sold it back in June.

Mr. Casscles: There's a boat there now?

Mrs. Murray: That's not our property.

Mr. Casscles: That's a different property?

Mr. Murray: That's the other neighbor's.

Mr. Casscles: Okay. I just wanted to clarify that there was...

Mr. Murray: Same boat they bought it.

Mr. Casscles: Oh, okay. Didn't go far then?

Mrs. Murray: No, it didn't.

Mr. Casscles: Okay, that was all I need.

Chairman Wright: How large is the RV?

Mr. Murray: 29 feet.

Chairman Wright: 29 feet – how high is it?

Mr. Murray: 11 feet 6 inches and we do have a...

Mrs. Murray: I do have – my neighbors signed an affidavit stating that they didn't mind.

Chairman Wright: Okay, Kathy can you take that?

Mr. Casscles: Do you have any access to your backyard?

Mr. Murray: No. The house is in a hole – like 15 steps down.

Mr. Fox: How far is the RV into the front setback at this point – where you have it parked now?

Mrs. Murray: 36 feet off Tomkins and 40, give or take, off of Hoover.

Mr. MacCartney: What are the dimensions again?

Mrs. Murray: It's about 36 feet off of Tomkins Avenue back and about 40 feet off of Hoover.

Chairman Wright: And you are unable to get it in your backyard or some other place and why would you not be able to do that?

Mrs. Murray: The house is "land locked" and there is a rock wall.

Mr. Casscles: Basically, your car is in the front setback, too? Where you park your car, right?

Mrs. Murray: The car is parked there, too.

Mr. McCartney: I am sorry – just so I understand the application, is the entire camper in the prohibited front yard setback or is it only a portion of it?

Mrs. Murray: Yes, we have no side yard or back yard.

Mr. Fox: I understand the County has a right-of-way there? Where does that lie?

Mrs. Murray: That lies right where the camper is.

Mr. Fox: Right where the camper is?

Mr. Murray: Yes.

Mr. Fox: Can you just point out where that camper is parked on the survey here?

(pointing at map)

Mr. Murray: Yes.

Mr. Fox: Is that survey – being familiar with the neighborhood...right along that slant. In this vicinity – would that be accurate?

Mrs. Murray: This whole thing – near the rock wall, it goes down. This is our backyard and this is our side yard.

Mr. Fox: Okay because this is showing as Tomkins Avenue here, but in actuality Hoover comes out into Tomkins in front of your property there.

Mrs. Murray: Right. It actually extends. Hoover goes further out. (inaudible)

Mr. Fox: So - I'm sorry Dave.

Mr. MacCartney: Looking at the survey is it actually parked outside of your property line? It looks like what you've just shown the Board is that it is actually outside your property line. It's not even on your property.

Mrs. Murray: This is County property - that - it's a right-of-way. They moved Tomkins Avenue at some point back - way; a few years ago. So we don't even know. And our driveway is on County.

Mr. Porath: Are you saying this - is this on your property? Is this your property?

Mrs. Murray: No, we own a small, small little piece of the property.

Mr. Porath: So the camper is actually on technically County property?

Mr. Fox: So for you to get into your home, you have to go on the County property?

Mrs. Murray: We have to.

Mr. Fox: So you are "land locked"?

Mrs. Murray: Totally.

Mr. Casscles: Their car is basically on County property also.

Mr. Porath: Does the County have to be involved in this?

Ms. Kivlehan: The County has been notified.

Mr. Fox: What's the County right-of-way there? What is it - I mean is it just because Tomkins used to be in that area and they moved it? What is the necessity for the right-of-way there?

Mr. Porath: It would seem like in many ways it would be no different than if someone was to park their camper on a County road; like on the shoulder, in many ways.

Mrs. Murray: (inaudible)

Mr. Porath: Yes, it's not exactly, but I mean in that regard so...

Mr. Vasti: I have a question for our Counselor. What jurisdiction would we have of granting a variance on property that belongs to the County? This seems almost like - unless they have an easement with specifics, granting them parking rights when the said property was taken over by the County, we have no jurisdiction to rule on this.

Mr. MacCartney: In my opinion you don't have jurisdiction to grant somebody the right to do something on County owned property. You only have the jurisdiction to grant parties relief in regard to property that they own or have an interest.

Mr. Vasti: Correct.

Mr. Porath: And you received a violation, zoning violation, or...

Mrs. Murray: A violation from the Town.

Mr. Porath: From the Town. I'm not even sure...

Mr. Casscles: I don't even think...

Mr. Porath: I'm not even sure the Town has the right to give them a violation on this.

Mr. Vastj: I think we need further clarification on this before we could – before I could proceed anyhow.

Mr. MacCartney: I could note for the record that the County of Rockland Department of Planning, the response that we got back from them indicates just what the Board is discussing with the applicant right now that it appears that the RV is parked on the County Highway right-of-way and no parking or storage of vehicles of any kind can be located within the County right-of-way. So they are objecting to it as a matter of course which is problematic. I don't think, I don't think the Board has the jurisdiction to grant the request as submitted – as the application is submitted. I just don't.

Mr. Keegan: Counselor, how else could it be – how else could it be submitted if the County owns the property?

Mr. Casscles: I think they would have to go to the County and get a variance from them; basically.

Mr. Keegan: Or an easement.

Mr. MacCartney: Some interest in the property in which the RV is parked of which you seek to park the RV. If you don't own that land, if it's County owned property, which it appears to be from the survey, your – any relief even if the Board had jurisdiction, it wouldn't do you any good because it would be giving you permission to do something in your front property, within the four corners of your property, which your RV isn't even there. So it wouldn't even do you any good as near as I can tell, but I don't think the Board – so the Board certainly wouldn't have jurisdiction to grant relief for anything outside your property. So I think – while I hesitate because it's not my place to give anybody legal advice other than the Board, which is who I represent, I would think that if you seek permission to put your RV on the property owned by the County, you would have to go to the first place, to the County, gain that permission in some way, shape or form, gain a property interest in their land. That would permit you to do that and where that would leave you with this Board that I don't want to speculate on because I don't know what interest you have. But, I think as written, the application, I think - I don't think the Board can grant you relief that gives you the benefit that you seek.

Mr. Vastj: I just like to make another point and that is I think it might be in the best interest of the applicant to check their easements or variance that they have – that's one observation. The other observation is there could possibly be, under the "Doctrine of Latches" that because of the time element that they've been living there and parking their vehicle there that they may have some entitlement since there is no other option and since the condition is pre-existing and the homeowner was there prior to the road being designated a County road it is possible under the "Doctrine of Latches" they may have some entitlement to that area; if it's not blocking the roadway. So these are things that need to be explored and I wouldn't want the applicant to go away with a feeling of ambiguity at this point; not knowing which direction to take. Certainly, should be taken up again with the Building Inspector to get some clarification.

Mr. MacCartney: I would agree with that because I think it's a difficult situation because if the RV is not on your property I can't, I'm not the – it's not my function to talk about what could be prosecuted and what couldn't or what charges could be levied and which can't. I think the charge probably assumed that you already that you do have an interest in the spot where the RV was located. It may very well be that the Building Department is unaware in fact that it is outside of your property line. They may be under the impression that they do have the property interest when you may not. But, you may. So do you know when the filing of the variance application serves as a "stay" of the prosecution of the charge that the violation that you have. What I might suggest, so it's not to expose you and to make sure that everything

gets straighten out for the benefit of everybody involved is that we may consider leaving – the Public Hearing has been opened. What I might suggest – one avenue would be for the Board to leave the Public Hearing open right now and not take any further action on it one way or the other this evening and have the applicant address this matter directly with the Building Inspector; either directly or if you have a lawyer take a look at it and on your behalf contact the Building Inspector to talk about your interest in the property and the issues that we are just discussing and I think report back at the next meeting as to what happened with that. I think there will be some developments maybe things will become a little bit more clearer in regard to who owns the property and what rights you may have, what jurisdiction this Board may have, if any, what jurisdiction the Town may have to levy the violation notice or any combination of the above. That would be my suggestion. There are other ways to handle it, but I think that seems to be most...

Chairman Wright: So the idea is we will leave the Public Hearing open and give you some time to go back to the Town and to the County and clarify some of these issues about the property. I think once we have those better defined and clearer defined then we can take on the question as to whether or not we can grant you relief on the variance.

Mr. & Mrs. Murray: Okay, thank you.

Chairman Wright: I will take a motion to keep the Public Hearing open.

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

Unidentified Male Voice: Can I ask a question?

Chairman Wright: There is no Public Hearing right now.

Chairman Wright: The next item on the agenda - Mr. Casscles did you want to make a recommendation – we are getting ready to...

Mr. Casscles: Yes, I would like to make a motion to go into Executive Session for the first item which is Application #13-12...

Chairman Wright: To discuss some legal matters pertaining to this particular case.

Mr. Casscles: Yes.

*****MOTION:** Mr. Casscles made a motion at 7:30 PM to go into Executive Session, pending litigation; seconded by Mr. Keegan. Hearing all in favor; the motion was carried.

*****MOTION:** Mr. Casscles made a motion at 8:18 PM to reconvene to regular Zoning Board of Appeals meeting; seconded by Mr. Vasti. Hearing all in favor; the motion was carried.

Chairman Wright: The next item on the agenda is the request of Robert and Britta Bush.

Request of Robert and Britta Bush – App. #13-12

Interpretation and appeal of the Town of Stony Point Building Inspector's decision in regards to a permitted use, located at 664 North Liberty Drive, Tomkins Cove, New York, to amend a previous decision for a variance issued on October 16, 1997.

Section 10.02 Block 3 Lot 4

The Board has reviewed the application, including the decision on the prior variance from 1997, which stated that once the applicant's mother no longer occupied the premises, the variance would be null and void. The Board's understanding is that the applicant's mother is no longer occupying the

residence. The application submitted is for an amendment for a variance that no longer exists and is for interpretation of Zoning Ordinance or map, but there is no ordinance or map to interpret. The application is defective on its face. A new application should be submitted for a use variance.

*****MOTION:** Mr. Casscles made a motion to accept the minutes of October 17, 2013; seconded by Mr. Fox. Hearing all in favor; the motion was carried.

*****MOTION:** Mr. Vasti made a motion to adjourn the meeting of November 7, 2013; seconded by Mr. Morlang. Hearing all in favor; the motion was carried.

Respectfully submitted,

Kathleen Kivlehan
Secretary
Zoning Board of Appeals