

**TOWN OF STONY POINT  
Zoning Board of Appeals  
Minutes November 21, 2013**

**PRESENT:**

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

**ALSO PRESENT:**

Dave MacCartney, Attorney  
William Sheehan, Building Inspector

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.

On the agenda tonight we have a couple of items – a couple of new applications and one continued Public Hearing. The new applications are a request of Robert and Britta Bush.

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

A variance from the requirements of the Town of Stony Point Zoning Code Chapter 215, Article IV, Section 12-F – Converting a one family to a two family in a RR District; use not permitted, at 664 North Liberty Drive, Tomkins Cove, New York.

**Section 10.02                      Block 3                      Lot 4**

Is the applicant or representative here?

**Unidentified Male:** I am their representative.

**Chairman Wright:** Do you have anything – this isn't the Public Hearing, but is there anything you want to say to the Board before or does the Board have questions for the applicant before we make a motion to put it on the agenda.

**Unidentified Male:** There really isn't too much to say. They are applying to convert it into existence use as technically it's been a 2-family for 16 years and that's the application is to make it a permanent situation. He is trying to sell the house and it would be very difficult for him to sell it without a legal 2-family.

**Chairman Wright:** I will take a motion to put it on the agenda.

**\*\*\*MOTION:** Mr. Casscles made a motion to place Application #13-12 on the December 5, 2013, agenda for a Public Hearing; seconded by Mr. Fox. Hearing all in favor; the motion was carried.

**Chairman Wright:** We will have a site visit on November 24, 2013, at 8:00 AM.

**Unidentified Male:** Can I just – for the sake that they showed up; this is the respective person who are buying the house and cottage that is currently there. For no other reason since they made the trip down and so I would like to say they are here and are in favor of this happening.

**Chairman Wright:** We will recognize that – thank you.

**Unidentified Male:** Thank you very much.

**Unidentified Female:** This is a neighbor for the adjoining property.

**Chairman Wright:** Okay. So what we've just done – we are going to put this on the agenda. We will have a Public Hearing in two weeks. So you probably want to come then because that's when we will be asking for input. This is a use variance so you've got – we know we've got some stronger fresh-holds to meet on that one; so...We will do the site visit on the 24<sup>th</sup>.

The second application before us is the request of Kevin Maher.

**Request of Kevin Maher – App. #13-13**

An appeal of the Town of Stony Point Building Inspector's decision (App. #13-09) for property located at 133 Central Highway, Stony Point, New York.

**Section 20.10                                      Block 2                                      Lot 59                                      Zone R1**

**Chairman Wright:** Is the applicant here?

**Unidentified Male:** Yes.

**Chairman Wright:** Anybody from the Board have any questions for the applicant before we make a motion to put it on the agenda?

**\*\*\*MOTION:** Mr. Keegan made a motion to place Application #13-13 on the December 5, 2013, agenda for a Public Hearing; seconded by Mr. Vasti. Hearing all in favor; the motion was carried.

**Chairman Wright:** We will have a site visit on November 24, 2013, at 8:00 AM.

**Chairman Wright:** We have a continuation of the Public Hearing for 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**

**Chairman Wright:** Are the applicants present? So I think – this was one where we had at our last meeting and there was an issue, I think Mr. Vasti pointed it out that they had the property was County property and I think we discussed with them that they would want to go back and probably talk to the County and see if there was some other remedies that the County was going to do. I'm not sure what their position is, but I would – I'm open for discussion if you want to keep the Public Hearing open. I don't see much – a whole lot of reason to close it...

**Mr. Vasti:** Mr. Chairman, there is a letter in our file from the County regarding this application and the County letter seems to indicate that they are not in favor of granting a variance because it would restrict the right-of-way for all public use because it would become an obstruction for line-of-sight for traffic. I would also make a recommendation, given that the applicant is not here, that we keep the Public Hearing open since we don't have an applicant here before us to ask any further questions. Also, I would like to find out if the application is still current or has the applicant withdrawn the application – if we could find that out maybe in the course of the next few days?

**Chairman Wright:** Is there any way we can find that out, Kathy? As far as we know, it's still...

**Ms. Kivlehan:** I can call them tomorrow and ask them.

**Chairman Wright:** Maybe we can say – if you're not going to be here for the next Public Hearing we will close the Public Hearing.

**Ms. Kivlehan:** I will also tell her to send a letter whether or not she is going to withdraw the application.

**Mr. Casscles:** Do we have any jurisdiction over this since it is a County property?

**Chairman Wright:** That is part of what we asked them to do. My thinking is that we want them to come here and tell us what the status is with the County and then we can go further, but if they are not going to show up for a meeting then I don't see any reason to continue the Public Hearing.

**Mr. MacCartney:** Right. At the last meeting during the Public Hearing the Board expressed concern to the applicant concerning jurisdictional issues and asked the applicant to ascertain more information concerning the property lines and are they actually asking for relief that this Board could provide; theoretically. Or are they asking for relief from this Board that it can't provide; such as a granted permission for the applicant to park an RV on some unrelated property? You wanted to give the applicant that opportunity – you could look at it anyway you would like. You can either close the Public Hearing tonight because the applicant wasn't here and, therefore, didn't provide the information. You can keep the Public Hearing open because you never know why the applicant didn't appear tonight. Maybe something – some other emergency that arose. I think it is up to the Board and you can certainly keep the Public Hearing open and give the applicant fair warning and in the interim they are expected to appear or the Public Hearing will be closed and then we can go forward at the next meeting – in that fashion.

**Chairman Wright:** Mr. Sheehan, do you have any point on this particular item for...?

**Mr. Sheehan:** Yes, basically, I spoke to the applicant. I personally went out to the site and took a survey with me of the property. There is no question about it – the RV is not on their property; it is the County property. What I did was I asked the applicant to withdraw their application, but in lieu of that, because I had none because I withdrew the violation, because I cannot issue a violation to a property that they are obviously not on. So as far as the Town's concerned, the Building Department's concerned, there is no violation on her property and I believe she had gotten to you people through the violation.

**Chairman Wright:** So if someone wants to make a motion to keep it open we will...

**Mr. Fox:** Mr. Sheehan, you said you have a survey for that area where the County property is there?

**Mr. Sheehan:** Well I had a survey of her property and what I had done was; obviously it shows the dwelling on the property, so I basically scaled off where the house and the property line and the sides are close. The RV is not on their property. So what I think – so I withdrew the violation. Obviously, I cannot issue a violation to somebody that it's not on their property. I think what Dave is saying is – do you actually have jurisdiction to even give relief on something that isn't on their property.

**Mr. MacCartney:** In particular there's not even an open violation because it's really an appeal of the violation. So there is no violation.

**Mr. Porath:** Are there any circumstances where we would have jurisdiction why this is even before the Board?

**Mr. Sheehan:** Well because what had happened was, I believe, we received a complaint from a neighbor so we sent somebody out to take a look and, I don't know why, but for some reason, it must have been assumed – because if you look at the property you would assume the driveway is part of the property just the way it is set-up. It was a right-of-way that is haphazard. Tomkins Avenue must have been over in that area over 50 years ago it was subsequently was moved to the south and as normal, like anybody here; your property doesn't actually go to the road. Usually the first 10 feet is the Town or County property – you mow it, you drive over it and so forth. That's the case here. But, this one is so obvious or not obvious because it is full driveway that must have been put here over the years and whatever.

**Mr. MacCartney:** The right-of-way is exceptionally wide I take it?

**Mr. Sheehan:** Yes. I believe Tomkins Avenue must have been to the north.

**Mr. Casscles:** It was over there. The old road is - at the top of the hill the old road is still in front of that – the house on the left hand side as you are coming down.

**Mr. Sheehan:** Okay.

**Mr. Casscles:** Behind the guardrail. The old road is there and it came right down across the front of that first long house and it made a little bit of a zigzag.

**Mr. Sheehan:** As a matter of fact the neighbor to the east of this property, also has a boat and shed that are also in the County right-of-way, but you wouldn't know by the naked eye because it looks like their property. So I have no jurisdiction to issue a ticket – what am I going to do issue a ticket to the County? So basically what's going to happen is if it is "withdrawn" here, which I think legally will probably happen; I can't issue a violation so it's something that the County would have to get involved in because somebody is encroaching on their property.

**Mr. Vasti:** Mr. Chairman, if I may...

**Mr. Porath:** Excuse me – there is somebody that wants to talk in the public here.

**Mr. Vasti:** If I may Mr. Chairman make a motion...

**Chairman Wright:** The Public Hearing is still open.

**Mr. Vasti:** If I may make a motion, I think given the information that we have from Mr. Sheehan, that the violation has been withdrawn, and given the fact that it has been clearly established by the Building Inspector that the property is County property and that we have no jurisdiction, I would make a motion that if we close the Public Hearing because this application is basically finished. It's dead. We have no input into this. This is actually a none entity at this point before the Board. So to discuss it further, to belabor it further would serve no purpose at all and it would not be constructive to do so.

**Mr. Porath:** Can I ask, as we do have a member of the community here. He has obviously made a point and wants to say something. Just out of a courtesy, even though I don't disagree with your point, I think just a simple courtesy – you are anxious to say something.

**Chairman Wright:** One second – please approach and just state your name – and this is in relation to the Murray property?

**Unidentified Male**: That's correct. I live next door.

**Bill Caropelo**  
**4 Hoover Place**  
**Stony Point, New York**

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

**Mr. Caropelo**: Yes. This is my wife, Camille.

**Chairman Wright**: Are you going to give any testimony, too?

**Unidentified Female**: I might.

**Chairman Wright**: Then I need you to identify yourself.

**Camille Caropelo**  
**4 Hoover Place**  
**Stony Point, New York**

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

**Ms. Caropelo**: Yes.

**Mr. Caropelo**: We were against it from the very beginning for one simple reason – it is probably for the health reason. What happens is – is where Mr. Murray parks his vehicle, his RV – Mr. Sheehan must know of it since he's been there – is that there are low level wires that come off from Hoover and they swoop down to Mr. Murray's house, which is at a lower level of the property and what he does is that he props up these wires, which are probably Verizon, Orange & Rockland, and other wires that are approaching his home, he props them up to...

**Mrs. Caropelo**: With a PVC pipe...

**Mr. Caropelo**: to move the vehicles in and out of the driveway. Now there is a school zone, or a school pick-up...

**Mrs. Caropelo**: School bus...

**Mr. Caropelo**: We are 30 feet from that house. Now if he happens to make that ajar or break a wire or anything in that condition, you've got serious problems on your hands. Now I have no objection, as far as him parking it there, but I do have an objection for him tampering with the wires. They are not his property, the wires. They never will be, but he yet insists on propping them up to move the vehicle in and out because the property is low and so is the pitch of the driveway. Now I find that dangerous not only to my family, but for the children that are on the corner and also for his tenants and himself for electrocution or anything for that matter. And I would like to put that down in the records.

**Mr. Vasti**: Why doesn't somebody call the utility company and report that they're hanging so low?

**Mr. Caropelo**: You know – I don't know. That's a good question, but why (inaudible)

**Mr. Vasti**: You certainly can call because they are near your house.

**Mr. Caropelo**: Well you know sir, the next time I will do that.

**Mr. Vasti:** I would make that recommendation because if they are hanging that low they may eventually be hit by a vehicle and I absolutely agree with you and I think that is a very valid concern.

**Mr. Caropelo:** Well I wanted it stated for the record in case somebody gets hurt and being that the property is not their own. Now, I don't care whether the property is not their own or not, that doesn't concern me. What concerns me is that there is a school bus zone right there – kids play, there is a hang-out over there for the children, there is a definite bus stop for two or three bus stops. Take a look at the wires yourself. I've seen them. They prop them up, they try to get them as high as they can to pull the trailer in and out because the air conditioner is on top of the trailer and will get in the way.

**Mr. Vasti:** Thank you.

**Mr. Caropelo:** You're welcome.

**Chairman Wright:** Mr. MacCartney – do you have any thoughts on that? I think Mr. Vasti has a good point. I am just curious...

**Mr. MacCartney:** Nothing beyond what I already said. You could do it either way. Is there a document on file in writing withdrawing the violation?

**Mr. Sheehan:** I have withdrawn the violation. Kathy might not have it yet, but I will get it to her.

**Mr. MacCartney:** I think what you could do is you could close the Public Hearing and then mark it for a decision. Next time we can decide and the decision might not be a conventional decision in regard to an area variance that is going through the typical factors. It might be something outside the box of what the Board is usually dealing with because it is dealing with issues that are very unique of this property; there is jurisdictional issues, there's all sort of issues and I think that should probably be dealt with in a resolution stating the reason for whatever action that the Board decides to take.

**Mr. Keegan:** We are in receipt of letters and things like that that are constantly coming from the County to this Board. My question is – is it a matter of courtesy or whatever to say that the Board has become aware because of this application that this condition exists and we would just like to formally tell you what is on our records and make you aware of the fact that this is what is going on. If they are not aware of it that if somebody gets hurt, especially children are involved, I mean this is a dangerous situation. You know I'm retired from Con Edison. It is a very dangerous situation. If they are tampering with power lines then that's – I know they are not tampering with the power lines.

**Mr. MacCartney:** The Zoning Board of Appeals, itself as an entity, doesn't have the jurisdiction to act in that way to go out of its way to proactively take measures and notify the County, however, there is nothing stopping any individual member from, just as a matter of courtesy as a member of the public, bring things to the attention of the County and certainly within the purview of the Building Department, Mr. Sheehan, cannot communicate with the County in regards to matters of enforcement violations of County laws, etc. Just the Board itself. The Zoning Board of Appeals, itself, is an entity of limited powers and jurisdiction.

**Mr. Keegan:** Okay.

**Mr. Porath:** Can I make a statement. I think two things – I apologize for interrupting you on your motion because I think it is valid. I support the motion that I believe is still on the table and second it that largely this matter is irrelevant to this Board since we don't have the jurisdiction. With that said, since a circumstance that has been brought to our attention of a potentially dangerous situation, I would suggest that the Board, in some form, notify the Town, be it the Town Supervisor, of a potentially dangerous situation so that the Town is an entity in some regard. I think it would be irresponsible for us just to say it's not our problem and walk away. So I would suggest that we at least notify...

**Mr. Keegan:** Somebody.

**Mr. Porath:** The Town Supervisor would be the most surest way to say that we asked them to look into how they could deal with this circumstance.

**Mr. Vasti:** I think that's a very good point, Mr. Porath. I would support that and certainly the Town Supervisor would have the authority to do that. Just as he would, in any situation, that there is danger, and I am sure he would be interested to find out about it and concerned.

**Mr. Sheehan:** Just to let to know that since the County is the interested agency that I agree with Dave that a written resolution is probably the way to go because once, whatever evidence there is, whatever the vote of the Board is, the withdrawal or denial, whatever might come out of this Board, will be sent to the County because they are an interested agency. So they will know the outcome too and so they will basically be put on record that they know the outcome now.

**Mr. Keegan:** My main concern is that we hear over and over again that this agency isn't talking to that agency and there is no communications and so forth and so on and I am really trying to avoid that.

**Mr. Sheehan:** At one time this Board didn't give anything to the County; it's just that it is required for us to send something to the County and most of the time; mostly every area variances are waived under adjoining Municipal Law by a resolution, but any time it is on a County road or abutting a County road, in this case, they're usually notified and then that is why they send letters to the Board. But, in most cases the Zoning Board does not – the County does not get notified what's before the Zoning Board so it is not really a requirement.

**Mr. Keegan:** Okay, however, we decide to resolve it so as long as someone is aware of it.

**Chairman Wright:** Can you restate your motion?

**Mr. Vasti:** Yes. I would like to make a motion based upon the testimony of Mr. Sheehan that the violation has been withdrawn and also, that Mr. Sheehan has stated that he clearly visited the property and determined by the survey that it is County property. That we close the Public Hearing since the issue is "moot" at this point. There is no jurisdiction for the Board. There is no violation and there is no reason to continue this or belabor this.

**Chairman Wright:** So the motion is to close the Public Hearing.

**Mr. Keegan:** Mr. Chairman, can I ask one more question? I don't mean to belabor – I was under the impression it was going to be some sort of a resolution which would in turn be sent to the County?

**Chairman Wright:** Well that would still be the decision.

**Mr. Porath:** We are just closing the Public Hearing.

**Mr. Keegan:** Oh, all we are doing is closing the Public Hearing. Okay, thank you. I am sorry.

**Chairman Wright:** And then we will have the decision...

**Mr. Casscles:** At the next meeting.

**Mr. Keegan:** Okay, fine.

**Chairman Wright:** So what we...Mr. Sheehan, I guess if there is anything...is there anything that we would need from you administratively to kind of...

**Mr. Sheehan:** I will forward to Kathy the withdrawal of the violation and what I did in my office. I apologize for not forwarding everything, but to be honest with you when I spoke to Mrs. Murray I was under the impression that she was going to be here withdrawing her application and then there would be no need to go any further at all.

**Mr. MacCartney:** And she may still do that in the interim – if she advised us as to what the Board is about to do and maybe she communicates with the Board and withdraws the application in which case a written decision would not only not be required it wouldn't be permitted. There would be nothing else for the Board to decide.

**Ms. Kivlehan:** Do you want me to call her and see if she wants to submit a letter or...

**Mr. Sheehan:** If she is going to withdraw it, she has to do it in writing.

**Ms. Kivlehan:** Okay.

**Mr. Casscles:** In the mean time, if it doesn't go that way you would need a Bill's removing of the violation.

**Mr. MacCartney:** It would be nice to have. It's not absolutely necessary. Mr. Sheehan's testimony here is sufficient for the Board. The Board can take notice of the fact that he's testified that the violation is withdrawn if need be. But, certainly it will be helpful to have the formal withdrawal of the violation in the record as well.

**Mr. Sheehan:** I thought it was going to be a "moot" issue. I thought she was going to come tonight and withdraw her application.

**Chairman Wright:** So I think the only other item we want to address is what Mr. Porath was talking about – is there a way, what would be our mechanism to notify – I don't know, Kathy could you notify the Supervisor of a potentially dangerous situation.

**Ms. Kivlehan:** With a letter from the Board?

**Chairman Wright:** Okay.

**Mr. Casscles:** If we had a resolution, Dave could build that into the resolution?

**Chairman Wright:** I think what Mr. Porath was going after was something a little bit more – so that's, you're right. I think along the standard pattern this would be introduced and it would be there. But, I think your point Steve was that we want to kind of get ahead of it because the potential danger – just so they are aware of it.

**Mr. Sheehan:** May I suggest – when we forward the minutes, like we always do to the Supervisor's Office, we can add a note to it that the Board is concerned about the wires over head and give him a heads up that something should be done.

**Mr. MacCartney:** As well as in regard to the fact that the RV is being parked on County property as well. It's a County issue so the County should just be aware of it.



**Mr. Casscles**: Because the wires are too low over the County property.

**Mr. Sheehan**: We will formulate a letter to both the Supervisor and the County when we give them the decisions.

**Chairman Wright**: So is there any other discussion on the motion pending to close the Public Hearing? If not, I will take a motion to close the Public Hearing.

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

**Ms. Kivlehan**: Can I just ask a question?

**Chairman Wright**: Yes.

**Ms. Kivlehan**: Back on the appeal for Kevin Maher – do you want the County to be notified again as far as the GML?

**Chairman Wright**: Are you talking about – I think where we are right now is we are put it on agenda for a Public Hearing at the next meeting and we will do all of our normal formal stuff then. Is there another question?

**Ms. Kivlehan**: Do you want me to notify the County with the GML?

**Chairman Wright**: Yes.

**Mr. Sheehan**: That is not a requirement under an appeal. Just to let you know.

**Chairman Wright**: Unless there's a – that's a good point. I'm just thinking unless there is a reason we wouldn't want to do that...

**Ms. Kivlehan**: That's why I want to ask the Board – do you want me to send it or not send it?

**Chairman Wright**: Does anybody have any concerns about that? Should she send a note to the County notifying them?

**Mr. Casscles**: It doesn't take nothing, right?

**Mr. Sheehan**: No.

**Mr. Casscles**: Then send it as far as I'm concerned.

**Ms. Kivlehan**: Okay.

**Chairman Wright**: So the last item on the agenda is the minutes of November 7, 2013.

**\*\*\*MOTION: Mr. Porath made a motion to accept the minutes of November 7, 2013; seconded by Mr. Fox. Hearing all in favor; the motion was carried.**

**\*\*\*MOTION: Mr. Fox made a motion to adjourn the meeting of November 21, 2013; seconded by Mr. Porath. Hearing all in favor; the motion was carried.**

Respectfully submitted,

Kathleen Kivlehan  
Secretary  
Zoning Board of Appeals