

**TOWN OF STONY POINT
Zoning Board of Appeals
Minutes December 5, 2013**

PRESENT:

Mr. Morlang
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.

Chairman Wright: We have a couple of items on the agenda today. We have a couple of Public Hearings. We will start out with the first Public Hearing – the 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

Chairman Wright: Is the applicant or representative here?

Andrew Cohen – attorney for the applicant

Chairman Wright: Please come forward Mr. Cohen and just let us know in your own words what they are looking to do with the property. Please identify yourself and, “Do you swear the testimony you are about to give is truthful?”

**Andrew Cohen – attorney
Nanuet, New York**

Mr. Cohen: Yes, I do.

Mr. Cohen: Mr. Bush unfortunately could not be here. He was – not sure if he is in the hospital, but I have a letter from his doctor advising him not to come. He had valve issues – whether or not he actually had an episode, but he was admitted a few days ago and as far as I knew he is still in there or was let out today. But, he would like to be here. Basically, the property, which I’m sure I know at least some members of the Board have been to, is a house and a cottage which the Board was nice enough to allow Mr. Bush to convert to a residence for his mother in 1997. I believe the understanding, as stated in...

Chairman Wright: Excuse me Mr. Cohen; I failed to open up the Public Hearing. Do I have a motion to open up the Public Hearing?

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

Mr. Cohen: Any way, whether or not he understood that it was solely for the purpose of his mom living there and then it was supposed to no longer be used as a residence, I can't tell you. But, the variance was given so that he could use the cottage for his mom and for that purpose and then his mom hasn't lived there and I believe passed away a number of years ago, but the cottage has been maintained and money was put into it for that purpose. It is still sitting there. He is now in contract to sell the house and the cottage and would like to not so much get a new variance as to modify the old variance for the purpose of allowing it to remain as it's been since 1997, which is a residence.

Essentially, that is it. We are in contract to sell. The person that is in contract has moved in. She is here tonight – Mrs. Thurston and she would like to use that cottage for her daughter to live in; so similar to the situation that was granted in 1997.

Pretty much that is the situation and we are asking the Board to give it all consideration. It has been there for years as a cottage and it will cause Mr. Bush substantial financial lose and more stress then he needs at this point anyway.

Chairman Wright: Anybody have any questions?

Mr. Vasti: I do, Mr. Chairman. I'm somewhat confused by the way the application is written. I was one of the Zoning Board members that visited the site on the Sunday before the past one. Now the variance that is being sought before the Board seeks permission to convert a one-family to a two-family in a "RR District" not permitted. What I saw was two separate buildings. We couldn't go inside. We did ask, but we couldn't go inside. There is a main building – a main home and then there's a secondary building. I would assume that's the building you are referring to as a cottage. It is somewhat predisposing. But, what are you seeking. Are you seeking to convert the main residence into a two-family or you going to have two separate one-family buildings?

Mr. Cohen: No, we are just basically seeking to keep it the way it is currently; not to convert the main house into a two-family. But, right now it's essentially acting as a two-family even though it's taxes have been paid on a two-family house for years. Everything's been done as though it's a two-family because it was essentially approved, whether you call it a mother/daughter or a two-family as two separate living residences. We just want the Board to allow it to remain that way for the new purchaser.

Mr. Vasti: If I understand you correctly sir, you are seeking to take a separate building, which you are referring to as a cottage...

Mr. Cohen: Yes.

Mr. Vasti: and you are seeking to have a variance, a use variance, of that whatever it was an accessory building or I have no idea what it was or might have been in previous years, but you want to bring that up to the standards and be recognized as a separate one-family residence. Is that what you're seeking?

Mr. Cohen: Essentially yes. Because all we are seeking to do is modify – the only modification that we are really asking for is that rather than just keep as a separate residence for his mother, which was already approved – his mother is not there anymore we would just like to maintain it as that second residence which it already is. You can call it a cottage or a second unit – it is the second house as you are facing the house on the left in its current situation, just to maintain it as it is, but not to have the requirement that it be used just for his mother because she is not alive anymore.

Mr. Porath: The conditions of that cottage – we can call it a cottage, the conditions of the cottage that warranted the Board previously to allow that to be used for the use of almost like a single family unit, has it been maintained, is it still in the same condition that would of warranted them, that Board at the time, to approve it for a one-family at the time?

Mr. Cohen: Absolutely. As I understand it, it's in better condition. He has very much been on top of it and the purchaser/tenant is here now. She can tell you the condition it is in as well.

Mr. Porath: It might be interesting just to know what's been done to it to improve it.

Chairman Wright: We will bring up the tenant – then we will let you...

Mr. Cohen: You want to bring her up now?

Chairman Wright: No, why don't we...we will ask you your questions and that way we are not back and forth with everybody. If you could just wait for us, for one second we would appreciate it. Anymore questions Mr. Porath?

Mr. Porath: No, that was it. I just wanted to see of the condition of the...if it warrants still being considered at least legally to meet all the Codes.

Chairman Wright: Okay, Mr. Keegan.

Mr. Keegan: I understand that you are the attorney that is seeking this variance. But, did you do any homework on how the variance was applied the last time?

Mr. Cohen: Only to the extent that I have the minutes of the last meeting.

Mr. Keegan: The last meeting.

Mr. Cohen: The last time that this was approved in 1997.

Mr. Keegan: You do have those minutes.

Mr. Cohen: Yes.

Mr. Keegan: So you did go over it.

Mr. Cohen: Yes.

Mr. Keegan: Do you understand the conditions under which this Board gave that variance?

Mr. Cohen: I do understand it.

Mr. Keegan: Now we are moving on, which is the reluctance of any Board when they grant a variance of that nature – every Board and I am sure you are familiar with this, is reluctant to do that because of this very situation. Do you agree with that?

Mr. Cohen: Are you asking me a question or telling me that this is...I'm not sure.

Mr. Keegan: Well let me make a statement. I was on the Board at the time and we were very reluctant to do it. However, because of the hardship of his mother and she was in very, very frail condition at that time, it was a humane variance more than anything else to allow this woman to die in peace next to her loved ones and everything else like that. Now we are bringing that forward into an enterprise.

Mr. Cohen: I understand the situation. I understand it was a dire situation. It happens to of turned into this situation...

Mr. Keegan: But, that was...the point I'm making is that was the situation under which we granted it to begin with.

Mr. Cohen: I understand and...

Mr. Keegan: And now it's turned into this.

Mr. Cohen: Well it's turned into...true. And I wasn't there 16 years ago, but I hear what you are saying. But, as you said, and that's maybe why you were reluctant to do it then because of what it might turn into and to some degree that is what it turned into.

Mr. Keegan: And now it has turned into that.

Mr. Cohen: Yes. He has put all this money into it...

Mr. Keegan: What it's turned into.

Mr. Cohen: But, what it's turned into doesn't necessarily negate the need to allow it to remain. Obviously, it's not causing any great harm to the community that I've been able to determine. What you have now is a second unit that somebody else wants to put their daughter in. I don't understand – I don't see how it will create any burden to this Board.

Mr. Keegan: What's to understand is that it is a use that is not permitted.

Mr. Cohen: But, it's already been permitted.

Mr. Keegan: The variance was granted. The applicant at that time understood clearly the nature of that variance because I was here. We made it specifically clear the nature of this variance. So to go ahead and put money into it and everything else like that and then claim that I'm having an economic problem, a shortfall, because I went ahead and I just did what I wanted to do in ignorance of the variance...

Mr. Cohen: I see what you are saying. The thing is that it's putting a negative spin on something that wasn't intended to go that way. It wasn't like he deceived the Board and really wanted to turn this into a monetary windfall. He did put his mother in there; she did pass away, and...

Mr. Keegan: And then what happened?

Mr. Cohen: And then what happened is the economy fell. The house is worth nothing like it would have been worth 7 or 8 years ago. He is trying to sell it.

Mr. Keegan: But, what does that have to do with his mother being sick?

Mr. Porath: Can I interrupt for a second. I think what...

Chairman Wright: Hang on for a second. Let's just keep it down. Let's understand what his position is and we will rationally act as a Board.

Mr. Keegan: Okay. I've made it clear where I am coming from so we will just leave it go at that.

Mr. Porath: If I can make my point and I certainly respect what Mr. Keegan is saying, but my concern, of course, is more this is directed towards the Board considering – I'm concerned that we are starting to go down a line of questioning where it's giving an opinion at a time where we are not at the point where we are rendering a decision. I think the line of questioning should be a little bit more objective. My perspective were simply the Board's – it may not be legally on paper what they are requesting, but this Board is being asked to reconsider the circumstances that it was given to originally, are there now different sets of circumstances that would warrant a reconsideration of that decision; is really all we are being asked to do? Is that correct?

Mr. Cohen: That is correct.

Chairman Wright: Mr. Morlang.

Mr. Morlang: Pursuing Mr. Keegan's line of questioning – following the death of the mother, how was the house used – the cottage used?

Mr. Cohen: I do not know the answer to that question and again I am a bit at a disadvantage because Mr. Bush is not here.

Mr. Morlang: Well we have a person who rented...

Mr. Keegan: No, she is the new...

Mr. Cohen: She's there now and there is nobody actually as far as I know in that second unit. She's in the main house as the purchaser with the hopes of being able to put her daughter in that second unit.

Mr. Morlang: Has the cottage remained vacant?

Mr. Cohen: It's vacant now. I do not know from the moment that his mother passed away until now that it was vacant. But, it is vacant now. But, part of the stipulation of the contract for her to go through the purchase is that she can use that unit for her daughter.

Mr. Fox: Mr. Cohen – we as a Board visited that property on a Sunday; I forgot what the date was, with the intention of seeing that cottage, so to speak, and I believe the new tenant of the main house was there and we were not given access because there was a tenant in that building; is that correct?

Unidentified Female: At that time, yes.

Mr. Fox: Okay, so the building is being used?

Unidentified Female: But, he is gone.

Mr. Cohen: Okay. I do not know that. Again I am at a disadvantage because Mr. Bush is not here.

Mr. Casscles: You said you got the minutes of our decision in '97, it specifically states in there – Mr. Bush knew and agreed to that when his mother passed away that he would relinquish all rights to have that as a second residence.

Mr. Cohen: I am aware of what it says. I am not aware of how cognizance he was of what he was getting himself into.

Mr. Casscles: Oh, Mr. Bush was very cognizant.

Mr. Cohen: I see what it says there, absolutely.

Mr. Casscles: How can you say that you want to extend something that no longer exists?

Mr. Cohen: I am not asking to extend it; I'm asking to modify it under the current circumstances that he is in. He is in a financial hardship. He is trying to sell the place. The place is there and he is a sick man. He is just basically trying to sell the house in order to be able to move on with whatever time he has left.

Chairman Wright: In terms of financial hardship, what evidence have you offered to indicate the financial hardship?

Mr. Cohen: Well the only contract we have, and I did want the realtor to come, but she was not able to make it, but the only contract that we do have is the one that only will go through if this second unit can be utilized as the purpose that Ms. Thurston is buying this place is so her daughter can move into the second unit. I have a print-out of all the other mother/daughters in the area and I without the aid of the realtor coming in to tell you what that would be worth without that availability I can't tell you specifically, but I know it's having spoken with her its many thousand dollars less.

Chairman Wright: So one of the things were are struggling with, is that the kind of variance you are looking for, a use variance, has a higher threshold then kind of an area variance and so in order for us to make those kind of determinations the amount of information; economic and otherwise, is more substantial then we have on an area variance and I think what we are kind of stuck with right now is that Mr. Bush is unavailable and we understand that. The realtor is not here who might be able to make the economic case. So there are I think several components that we would need to have more information on, at least in my mind, to really go a whole lot further. I'm open to continue the Public Hearing and get what we can out of the public here, but in my own mind I am kind of struggling with those components.

Mr. Cohen: And I understand that because I did try to get – obviously Mr. Bush couldn't make it and the realtor is out of Town. I try to get her here as well because I anticipated that that was going to be a question. Depending on Mr. Bush's health, I would love to have him here and to get the realtor down I am sure to do what we can. If not her, then somebody else who could testify. I did try. I am aware.

Mr. Vasti: Mr. Cohen, have you had an opportunity to review the deed and certificate of occupancy for this property?

Mr. Cohen: I have in the past, yes.

Mr. Vasti: And what is the certificate of occupancy stipulate?

Mr. Cohen: I don't have it in front of me; do you have it in front of you?

Mr. Vasti: No, I don't. That is why I am asking you.

Mr. Cohen: I have to see if I do have it in this file.

Mr. Vasti: And my follow-up question would be are you going to be the attorney that will be handling the sale of the home?

Mr. Cohen: I am the attorney – that's how I was, I entered this situation because I was the attorney that handled the sale of the home or potential sale of the home and drafted the contract and then we determined that there was an issue. So I am that attorney.

Mr. Vasti: Were you in touch with the buyer's attorney?

Mr. Cohen: Yes, more than once.

Mr. Vasti: And is the buyer's attorney aware of the situation of this property and aware that a variance is being sought while the property is in contract. As I understand, there was a sign outside stating that the property is in contract – is that correct?

Mr. Cohen: He is absolutely aware.

Mr. Vasti: He is aware.

Mr. Cohen: Infact the contract specifically states that subject to the use being allowed...

Mr. Vasti: I would ask – I am speaking openly to my fellow Zoning Board members, I would like to have a copy of the certificate of occupancy and deed so that I could get some clarification on this property.

Mr. Cohen: I can certainly get you a copy of the deed and the certificate of occupancy. I would think that it's easily accessible here as well, but I can get it for you.

Mr. Vasti: Thank you.

Mr. Casscles: I have a couple of questions. On the application, page 4 it says the amount paid for the parcel says "to be provided/determined at a later date".

Mr. Cohen: I'm sorry.

Mr. Casscles: How much of a later date? The amount paid for the parcel, it says "to be provided..."

Mr. Cohen: The amount paid for what...

Mr. Casscles: Page 4...

Mr. Cohen: Yes. Okay.

Mr. Casscles: Question #5 on page 4.

Mr. Cohen: This may take a minute. Do you just want me to look at your copy for a second because by the time I look at mine...?

(Mr. Cohen looking at the application.)

Mr. Casscles: Question #5 is the first one.

Mr. Cohen: "The amount paid for the entire parcel was" - Yeah I don't have the record. I had asked him.

Mr. Casscles: Okay – how about #8?

Mr. Cohen: "The monthly expenses attributed to normal and usual maintenance of the property are" – Okay.

Mr. Casscles: And how about that one?

Mr. Cohen: (looking at application)

Mr. Casscles: There are a lot of blanks there.

Mr. Cohen: Yes. I mean if those are deemed relevant I can get you all that information.

Mr. Casscles: And who wrote that – Mr. Bush, himself?

Mr. Cohen: No, I wrote that.

Mr. Casscles: You wrote that.

Mr. Cohen: I had spoken with Mr. Bush.

Mr. Casscles: Okay.

Mr. Vasti: Mr. Cohen, has a closing date been set for this property?

Mr. Cohen: No.

Mr. Vasti: Is the sale of this property contingent upon this variance being sought; being granted?

Mr. Cohen: Yes. The contract says in paragraph 19 “Is subject to a lawful use of a second residence of the premises”.

Mr. Vasti: Thank you.

Chairman Wright: Does anybody have more questions for Mr. Cohen? Is there anybody else in the audience who wishes to speak? Please come forward and identify yourself.

Mr. Cohen: Can I just ask you one thing? Do you want me to provide you with all that additional information prior to making a decision?

Chairman Wright: So let me just get a quick pole from the Board. It sounds that we are going to probably keep the Public Hearing open. In that case, we should probably ask for that information.

Mr. Cohen: So you want the deed, the C.O., and...

Chairman Wright: You need the deed, the C.O....

Mr. Cohen: Fill in the blanks as best as I can get you that information.

Chairman Wright: And to the extent that you can make the economic argument, what is the damage going to be if the variance is denied?

Mr. MacCartney: If I could just hop in – those questions, 5 through 11 on the application, are just sort of used as a guideline to help provide the proof necessary under the Town Law for a use variance and with the standard being you have to prove that their...within the absence of the variance the applicant cannot realize a reasonable return on the property and it has to be supported by “competent financial proof”. So this is through the outline and what I am hearing from the Board is that they want to hear more about the financial in terms of the contract amount, maybe the amount that was invested in the property in the meantime, when it was invested...put together the financial package I think for the Board to understand is there a reasonable return, is it supported by...if not is it substantial and if it is substantial is it supported by...

Mr. Cohen: Thank you. I am at somewhat of a disadvantage because Mr. Bush is living by Lake George and apparently in and out of the hospital; possibly still in. I will do my best to get you that information. The most concrete thing I can get you would be something from a realtor. If this meeting is going to be adjourned to another meeting, I can again try to get the realtor here to give testimony...

Chairman Wright: What we will do – I think, what we agreed to is that we will leave the Public Hearing open. So we will have another – and our next meeting in 2 weeks we will go ahead and carry it over and then if you have more information you can supply it to us.

Mr. Cohen: Certainly the deed and the C.O. is easy. Getting the realtor here, I will do my absolute best. She has a vested interest in getting this done and sold obviously. The information from 5 through 8, I will try, I don't want to just provide you with half the information. It's very hard to get the full exact story from him.

Chairman Wright: I think the Board will, within reason, will work with you around your client. But, without that information it would be very difficult for us to make a sound decision.

Mr. Vasti: I have a couple of other questions Mr. Cohen that just came to mind. You had mentioned earlier that the applicant had made substantial financial improvements to the dwelling, I would ask you the present buyer of the property – did the buyer have a homeowner’s inspection done on both dwellings?

Mr. Cohen: You will have to ask the homeowner. I’m not, as the seller’s attorney...

Mr. Vasti: Not the present owner, but the buyer.

Mr. Cohen: I mean the present buyer; she is here. As the attorney for the seller, I don’t get too involved in that unless there are issues that come up in the inspection.

Mr. Vasti: Do both residents have their own electrical service with an electric meter and gas meter?

Mr. Cohen: I believe so. But, again she will be able to answer that.

Mr. Vasti: When was the last time the buildings were inspected? Do they have C.O.s for the improvements that were made; the financial improvements? Were Building Permits sought for these improvements with the Town?

Mr. Cohen: I would have no idea.

Mr. Vasti: Well we would need – I would need that because by me granting...if sitting on this Board and granting a variance to a potential buyer to live in a building that I don’t even know is safe, that was inspected, that had work done that was a permit was filed. These are all very important things for a person to live in a building that could potentially be dangerous.

Mr. Cohen: Now is this something...because I believe Mr. Bush told me that the Building Inspector was out there a year ago, but this is something that I believe you would have more access to as the Board. I can certainly request the Building Inspector to provide a letter to requisition the entire file.

Mr. Vasti: I think I would like to see such a letter. I think it would add credence to your applicant’s...

Mr. Cohen: As to when the Building Inspector last inspected the two family?

Mr. Vasti: When the building was inspected and if it meets all the Codes and is up to standard?

Chairman Wright: Any questions for Mr. Cohen? If you could, just identify yourself?

**Ronald Redman
712 North Liberty Drive
Stony Point, New York**

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

Mr. Redman: Yes, it is.

Chairman Wright: Okay, you can proceed.

Mr. Redman: I am the neighbor to the north of the said property and I have two objections. One is short term. I think that making a single family house a two family house is going to lower my own property; my own real estate values. The second question I have is more long term. If this takes precedence and one and more houses become two-family that are one family now, the impact on the school system...and you know now the school taxes are ridiculous and is it going to go any higher. This is a good opportunity for them to go higher. That is really about all I got to say.

Chairman Wright: Anybody have any questions?

Mr. Redman: I am going against it. You have any question? Everybody agrees with me?

Chairman Wright: Thank you. Mr. Sheehan – you just want to come up and identify yourself and, “The testimony you are about to give is truthful?”

Bill Sheehan – Building Inspector

Mr. Sheehan: Yes, my testimony will be truthful. Just to give you a little history of the property. Back in '96 they applied for a permit to convert a garage into a single family. Obviously the permit was denied and sent to the Z.B.A. The Z.B.A. approved the second family with conditions, obviously. As far as inspections, after the Z.B.A. granted their variance we issued a permit, they converted a garage to a single family with inspections. The C.O. reads conversion of a garage to a single family, which was issued back in '97. But, since then the Building Department wouldn't be inspecting those dwellings because they are single family homes. We do not inspect single family homes. The only thing we are required to do is inspect multiple residences; three or more families. Now, if they have done work on it with permits obviously we would go out and inspect. To my knowledge – I know for a fact there has been no other permits issued on that dwelling. So I don't know what Mr. Cohen is speaking about somebody was out there a year ago. Possibly, there was a complaint and one of my guys went out or something like that. But, we do not just go and inspect existing dwellings. As far as the neighbors' concerns, understandably nobody is converting one of those dwellings to a two family. It is staying exactly the way it is. I don't know when Mrs. Bush passed on. I believe it's been a while and I believe it's probably been rented ever since; whatever year she moved on.

I checked the files when Mr. Cohen was researching the property and actually I think the way it came about was that the buyer's attorney went through the files and found the condition. That's how I think this came up. It wasn't that it was “red flagged” and so forth. But, going through the file we've never received any complaints or any issues up there to my knowledge.

But, to answer your question Mr. Vasti, no we haven't inspected it since the C.O. was issued.

Mr. Vasti: Thank you very for much Mr. Sheehan.

Mr. Keegan: Just one question Bill – when the variance expired with the death of Mr. Bush's mother, the variance at that time legally expired; am I right?

Mr. Sheehan: With your condition, yes.

Mr. Keegan: At that time, did the C.O. go away as well?

Mr. Sheehan: Well the C.O., again...

Mr. Keegan: Because the variance no longer exists?

Mr. Sheehan: The variance – the use variance, no longer exists upon your conditions. Obviously, without getting an obituary sent to us at the time we wouldn't know. I can't answer legally does the C.O. go away – I would assume it does. I can only tell you that the C.O. is – how C.O.s are written are, they are written off of the permit. So the permit was written to convert a garage to a single family. So that's how the C.O. went out; as a single family. We get a lot of people in sometimes they want to get a C.O. for their house because they don't have one and most of the time we have to explain to them we just don't issue C.O.s. You cannot get a C.O. unless there is a permit. So if your house was built in the 1800's, obviously there is no C.O. We won't give you a C.O. We will give you a letter that predates zoning. So that's the only way C.O.s are generated; off of permits. Legally, I think you'd have to talk to the Town Attorney, but I believe if the condition is upon death or sale or whatever condition might of...

Mr. Keegan: Because I remember making this very specific...

Mr. Sheehan: I know you were here and I don't...obviously it was never challenged or was agreed upon back in '97. I would think that the C.O. probably would be null-in-void. I think that's why. And, what I had done when they came here I had sent them for an interpretation or an appeal because of my thinking was to have this Board decide the best venue to go. I thought there might have been a way you could just amend the application or the condition and remove – which we do, not a lot, but at the Planning Board. People come back with their subdivisions or site plans and we amend the notes if need be. But, this Board chose to go for a full use variance, which is fine. So I think that's why it might not be some follow-up paperwork at this point because we all know the four bullets you have to hit for a use variance.

Mr. Keegan: Actually it is five.

Mr. Sheehan: Okay. I think its four.

Mr. Porath: Given from my understanding the circumstances what's before this Board that we are really being asked to consider extending or, however, you want to characterize it and allow this condition to continue as far as using that facility as a two-family...it was two houses together as a two-family...

Mr. Sheehan: If I can interrupt – if you have two families; two buildings on one piece of property, two single families is considered a two-family. Zoning wise and tax wise; really not Building Code wise because separate buildings are treated separately.

Mr. Porath: My question was going to be would it be reasonable to think, setting aside process for a moment, that if the Board was to approve this and part of that condition was for the Building Inspector to go out and make sure that everything was up to Code and that it was a safe environment; is that something your office would do?

Mr. Sheehan: Yes, we would. Obviously we would need the okay because we do not have the authority to inspect without approval from the owner. But, yes we would take a look; sure. But, these structures are all on one property and the property, the way it is situated, could not be subdivided because they don't have enough property for two lots. So whatever this Board does, if they do grant...if you do grant the variance it's going to stay like that. The way it is today.

Mr. Vasti: Mr. Sheehan, I began initially to speak to the way the variance was written and you know I wanted to clarify that it was not converting a single structure to a two-family and that was clarified. It would be more appropriate possibly to say to convert an accessory building into a one-family residence on a single lot with an existing one-family home.

Mr. Sheehan: That's the way the additional variance and permit and C.O. was issued in '97 because it was a one-family with an accessory building which I believe was a garage and they were converting that garage to a single family.

Mr. Vasti: Because as we look at this property now in its present state, with the passing of Mrs. Bush, that building has resorted back to an accessory building. It doesn't have a garage, but it's no longer considered a legal one-family because of the special variance that was sought. So that is why I wanted to get clarification on the wording of this. If it could be reworded, so that down the road if somebody goes back and looks at this they will understand exactly what we are looking at right now.

Mr. Sheehan: Okay. That is fine and I have to admit that it is probably my fault because of initially how I sent it. I assumed; I shouldn't of assumed, but I thought we could, the Board, if they were inclined that it wasn't an issue that you would amend the condition of the original variance and that would be the end of it. Obviously, I was wrong.

Mr. Vasti: Thank you very much, Mr. Sheehan.

Mr. Sheehan: You're welcome.

Chairman Wright: I think – ma'am did you like to speak next?

Unidentified Female: Would you like me to answer questions?

Chairman Wright: Can you just come forward and identify yourself and I will swear you in.

**Linda Thurston – prospective buyer of
664 North Liberty Drive
Stony Point, New York**

Ms. Thurston: We are now currently in the home. He allowed us to move in prior to closing to try and straighten out this variance issue.

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

Ms. Thurston: Yes. I tell the truth always. I have no reason to lie. Basically, the property was presented as a multi-family parcel; one piece of property with two homes by the realty company and everything and the tax map showed it as a multi-family home. However, Mr. Heavner, my attorney, after looking into the property, saw that condition I guess and stipulated in our contract that Mr. Bush would have to obtain this variance in order for the sale to go through at the contracted price. So basically we are in, waiting to close on this...waiting for your decision to close.

Mr. Porath: If this variance wasn't granted, would you still buy the house?

Ms. Thurston: Not at this current contract, no. I can't do it.

Mr. Fox: Not at this current contract, you said?

Ms. Thurston: No, not what we agreed on in the contract. Not the price there. As far as the home and the cottage is concerned, they are both in excellent condition. Everything is in working order. Very pretty; up-dated. I had Mr. Rich McNichol, inspect the premises and found nothing wrong with it. Also, the bank that we are financing the property through came out and they did a bank appraisal and everything was in order. It is a "FHA Loan" so they are pretty picky about things. They make you fix anything that's wrong with the property. Other than that, if you have any other questions – that's where I'm at and that's why I am here today because this is important to us. I do have a 30 year old daughter who would like to live in the cottage. However, I'd like that to be a legal structure for the future. If I retire and move to Lake George someday – I would like to be able to sell it as a legal dwelling; not as a garage.

Chairman Wright: Any questions?

Mr. Keegan: Just one. When you applied to the bank and the bank came out and did the appraisal and everything else like that, did they pick up on this condition?

Ms. Thurston: On the situation with the...

Mr. Keegan: With the variance?

Ms. Thurston: No. No. They didn't question at all that it wasn't multi-family. Like I said the man has been taxed for 16 years on multi-family. It is on the tax map that way. So it was never even questioned.

Mr. Keegan: That is all. Thank you.

Ms. Thurston: Okay. Thank you.

Mr. Cohen: The way the contract reads in the stipulation is that the second unit be a lawful residence. We are not necessarily asking the Board to make it a legal rentable property. The term "mother/daughter" would suffice as well. As long as it is a legal residence, as opposed to an illegal residence. So if there was a new stipulation that could be modifying the old stipulation so that it could continue to remain as owner/occupied family household members, something to that effect, that would satisfy what it is that we are asking this Board. So if the concern is multiple families moving in and out and devaluing the residence, it is not with that intent that this application is made.

Mr. Vasti: Mr. Cohen, as far as I understand and I'm a resident of Stony Point for 21 years, there are no such thing as "mother/daughter". Am I correct, Mr. Sheehan?

Mr. Sheehan: You are correct.

Mr. Vasti: So that term is very loosely, unfortunately, used by realtors to create some sort of an illusion to potential buyers and although there are some very large homes here, spacious homes, very stately homes that could certainly accommodate a family or even two families, there is no such thing as a legal "mother/daughter".

Mr. Cohen: Perhaps in this area. There are such things as legal "mother/daughter"...

Mr. Vasti: But, not in Stony Point.

Mr. Cohen: Perhaps not, but except that this, up until the passing of his mother, was a legal technically "mother/daughter" or "mother/son" if you will. So this was the exception to the rule. We are just asking that it remain that way.

Chairman Wright: Any other questions? Anybody else from the community have any questions? If not, I will take a motion to keep the Public Hearing open and we will put it on the agenda for our next meeting.

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

Chairman Wright: Next item on the agenda 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: Mr. Maher would you like to tell us in your own words what you are seeking?

Mr. Maher: I would like to thank the Board again for giving me the opportunity to speak. We all have pet phrases that we like to use to describe things and the years that my father spent with the I.R.S. he gave me quite a few and one of them is “ab initio”. In Latin, it means from the beginning. So in reference, I am using that to start here with my discussion. On October 17...

Ms. Kivlehan: Excuse me; you need to swear in Mr. Maher.

Chairman Wright: I am sorry, Mr. Maher “Do you swear that the testimony you are about to give is truthful?”

Mr. Maher: Yes.

Chairman Wright: Please, just identify yourself to the Board.

**Kevin Maher
130 Central Highway
Stony Point, New York**

Chairman Wright: Okay, thank you.

Mr. Maher: On the October 17th meeting, when the VonHeins asked to have their variance withdrawn, Mr. Vasti asked a very important question of Mr. Sheehan – “Did you go to the property and inspect the property and see that it complied with the ordinance?” At the time Mr. Sheehan said it really didn’t make a difference because they were withdrawing their application. Now we have a statement that was made by Mr. MacCartney that since the variance was being withdrawn the court case pending against them would go forward unless the Town withdrew the violation. Coincidentally, the next day a letter was issued by Mr. Sheehan specifically stating that – that the violation was being removed because he inspected the property and found everything in conformance.

I have – I would like to introduce into evidence some photographs that I believe stipulate something else.

(handing out papers to the Board – marked as Exhibit “A”)

Let’s take a look at the first 2 pictures. They are dated October 10, 2013. As we remember, I’d like to call it that infamous Sketch “A” that said that the obstructions have to be removed from the shaded area, which basically encompasses the curved area of the property plus 25 feet, straight down each side of the road...in other words 25 feet down Central Highway, 25 feet down Sullivan Drive. If you look at the first 2 pictures, the trees were just removed where the curved portion of the pavement exists. There is nothing past that. Now, if you remember during my testimony at the October 3rd meeting, I made a statement referencing the “Palisade Effect”. But, let’s first go to the next picture dated October 19th which would be the day after the letter was issued. The first photograph you see is from Sullivan Drive looking toward Central Highway. Again, you can see the curve of the curb line and you will see where the trees stopped being cut. It’s not being cut 25 feet passed that point. The next picture is - you’re approximately 10-15 feet away from the stop line and that again where I am getting back to that statement about the “Palisade Effect”. Notice the tree trunks forming like a wooden wall. That’s the point I was trying to make at the October 3rd hearing that you have this effect there; a wall of wood blocking the view. You just notice a car just to the left of the pier at the end of the VonHein’s driveway. That’s the extent of the view court that you have. The next page, the next photograph, is you are actually stopped at the stop line, you are in the driver’s seat, you are looking down the street to try to see is there a vehicle coming at you. You see the trees cut past the 25 foot mark; I don’t see them there. The next picture over, dated the same date, you have to pull, again this is a little bit further out then you really need to pull, but still you have to pull past the stop line in order to get a clear view down Central Highway. That was the same argument I posed on October 3rd. So in my opinion, it doesn’t look like the conditions really changed much.

Now when we get back to the letter that was issued by Mr. Sheehan, I foiled that letter plus any supporting documentation. What I got was three pieces of paper – the letter itself, a copy of a print-out from the program that showed that Mr. Sheehan had in fact pulled the violation (in essence cancelled it) and a third piece of paper was an email to his secretary which contained a text of the letter itself. No supporting photographs to back-up his opinion, no site sketches, nothing.

So we have to look a little further into this. Let's go back to that first two pictures again. In Mr. Sheehan's letter, he just referenced the trees that were cut. If you notice, there is some new landscaping that was installed in between the trees. Mr. Sheehan's letter does not reference that landscaping at all. That landscaping is in the shaded area just like the trees were. I can't tell you myself personally right now what they are, but I do have evidence as to what they are. We still can't forget the fact of the letter that was issued by the County Inspector about the danger at this intersection. It needs to be, I will not say comply with, but it should have been taken into very serious consideration.

The other thing we have to look at – there were three other property owners in the area. One at the corner of Lewis and Washburns; at the southwest corner; one at the southwest corner of Central and Washburn and the other at the northeast corner of Central and Washburns. All three of those properties conformed in a larger extent than the photographs you see of the VonHein property. And, that's since my argument here is that the letter that Mr. Sheehan issued is a "back door variance". The letter in essence, let's the VonHeins go to a lower standard, less the clearing than the other people did. And that's blatantly obvious. You can see it in the photographs. It's not a case of an interpretational error on my part. The photographs speak for themselves.

Now let's get back to those landscaping pictures. Do anyone on the Board, looking at those first two photographs, can anyone of you tell me what those are? Does anybody have a guess?

Chairman Wright: No, why don't you go ahead and proceed.

Mr. Maher: I have – I am going to submit evidence on that, too.

(handing out papers to the Board – marked as Exhibit "B")

What I have here is a letter from Cornell Cooperative Extension Arborist identifying those plantings as "Eastern White Pine Trees". They are not shrubs; they are trees. These same pieces of landscaping are missing from Mr. Sheehan's letter. I don't know why. They were there the day the inspection was done. You can see from the October 10th picture, the October 19th picture – the landscaping was there. So basically you have trees that have been planted back in the shaded area; according to Sketch "A". The old saying is "if it walks like a duck, quacks like a duck; it's a duck". Why weren't these trees called out to be trimmed? They never should have been put in, in the first place. So basically what we are looking at here is I'm claiming that this letter that was issued by Mr. Sheehan is arbitrary and capricious; arbitrary in the sense that there is no rational connection between the facts shown and the choices made by Mr. Sheehan. That was pretty much pointed out by Natural Resources v.s. U.S. in the Ninth Circuit Court in 1992. It's my belief that his lessening of the requirements of the VonHeins is in essence as I said before a "back door variance" and that he and he alone decided that what was done out there was adequate.

The facts prove otherwise. What we have here is, in my professional opinion and experience with Zoning Laws, not just here in Town, but as a professional Engineer presenting site development plans throughout the tri-state area, I've been before Zoning Boards of Appeals or Adjustments depending upon what jurisdiction you are in. It's my professional opinion that only a Zoning Board of Adjustment or Appeals has the right to lessen a variance; not a Building Inspector or a Zoning Code Officer. He does have the right to make a recommendation because that is what you as the Board would be asking Mr. Sheehan – do you believe this is adequate? But, I don't believe he has the right, the legal right, to make the decision that was made.

That is my summation right there.

Chairman Wright: Any questions?

Mr. Vasti: Mr. Maher, thank you for your pictures and your information regarding the trees. You certainly have done a commendable job of doing some research and also thank you for your concern about safety. But, there is two things that I would like to say. First, I want to make a statement and then I also want to ask you a question, sir.

Mr. Maher: Sure.

Mr. Vasti: The statement I would like to make is that when the last time that I looked at Mr. Sheehan's position on this, I was presented as well as the rest of the Board with a diagrammatic picture of a radius that reflects the Zoning Code and the applicant did a trimming job that complied with that radius. Simultaneously, the variance was withdrawn and I would like to keep those two things separate. I think they are both separate items and by combining them there never was any "back door variance" because there was never any variance. There is some validity to what you are saying; certainly I can understand and I feel your frustration. But, they are two separate things.

My second position, my second question to you sir – what would please you, let's say you had "carte blanche" with this and you had the ultimate authority to tell these folks what to do with their property, what would satisfy you?

Mr. Maher: I am worried about the safety there. So the safety would be to make sure that there is a clear sight triangle. There doesn't appear to be. The evidence shows it's not clear. I know our Town Code is a bit vague when you speak about trees in the shaded area. It never specifically said "trees". It just said "other vegetative matter".

Mr. Vasti: How far back would you want them to remove vegetation?

Mr. Maher: The 25 feet on each side, plus the radius there. That would open that up, as a professional engineer that would open up that intersection and make it fully visible. The other individuals at the other points that I did mention to you did comply in that fashion. They cut their shrubs down; they removed shrubs, whatever they did. They did exactly that. They complied almost 100%. Nobody is 100%. But, they complied far more to the Zoning Code than the VonHeins did with their operation.

Mr. Vasti: May I ask you another question?

Mr. Maher: Sure.

Mr. Vasti: What do you do for a living? What is your occupation?

Mr. Maher: The Town Engineer.

Mr. Vasti: Okay. Thank you.

Mr. Maher: Sure.

Chairman Wright: Any other questions?

Mr. Keegan: Yes. Mr. Maher, up to this point you have – we have discussed this case and all the provisions surrounding this case. I have another concern altogether and that concern is at this particular hearing I get the impression that you are coming here as a Town Official, as a professional Engineer. You denoted it several times into the record. On another note altogether, are you or have you ever or is there currently any kind of a personal dispute going on between these people. Because I'm getting a very, very bad feeling here. I got a bad feeling at the last hearing and I didn't say anything, but I am really getting a bad feeling about this.

Mr. Maher: Okay. I've tried to keep my mouth shut. I've never responded back to any of the verbal accusations that have been made across the street to me. I did report them...

Chairman Wright: Just real quick – I don't want to cut you off, but what I don't want to do...

Mr. Maher: I know. I don't want to drift that way either.

Mr. Keegan: I'm just asking if this is a personal history going on here.

Chairman Wright: My only fear is that – it will go down there.

Mr. Maher: It will degenerate. I don't want to go – I don't think it's – I don't...

Chairman Wright: I think it is shared, but I would prefer not to do that if we can avoid it at this point.

Mr. Keegan: I think it is relevant.

Mr. Maher: As far as my position here, where I am tonight, I'm here as a resident and as a professional Engineer. Not as the Town Engineer. That's not why I am here as the Town Engineer. I'm here as a professional Engineer.

Mr. Keegan: Okay.

Mr. Maher: Thirty years of experience.

Mr. Keegan: I wanted to clarify that.

Mr. Maher: Yes, I did answer Mr. Vasti question – yes, I am the Town Engineer, but I am not here as the Town Engineer.

Mr. Keegan: Okay, fine.

Mr. Porath: Mr. Maher is it fair to say that you are here solely in the context that you are, as it says on our agenda, your only concern tonight is that you are appealing the validity of the Building Inspector's decision that the conditions that were created the need for a variance, he says they now no longer exist. Your simply challenging that conclusion of the Building Inspector.

Mr. Maher: That is correct.

Mr. Porath: Beginning and ending. That is it.

Mr. Maher: That is correct. That is 100% correct, Mr. Porath.

Mr. Fox: Mr. Maher, how long have you lived across the street from the VonHein property?

Mr. Maher: Since February 2011; so it would be almost 3½ years – almost 3¾ years. Since February 1, 2011.

Mr. Fox: And when did you first make this complaint?

Mr. Maher: November 2012.

Mr. Vasti: Mr. Maher, the Building Inspector's interpretation, as I understand it, is based on a metric – a set of numbers designated on a radius that has been established on the Zoning Code. Would you agree with that to some degree or do you agree with that fully or do you disagree with that?

Mr. Maher: I mainly looked at the sketch that was used as the reference which shows that the area where the vegetation needs to be trimmed/removed, however, you want to refer to it is bounded by the curved area, plus 25 feet straight away – to use surveying terminology "point of curvature" "point of tenancy". Those are the two ends of the curve. You then go 25 feet in a straight line parallel to the edge of the pavement, parallel to whatever is out there and then you draw a triangular line. It's a combination of a triangle and a circle basically is what it is. And that's the area specifically called out in the Town Code where the vegetation needs to be removed and/or trimmed depending upon how it's classified; if it's a shrub, a tree, or branches.

Mr. Vasti: My interpretation is regarding the Building Inspector's interpretation is that there are "meets and bounds". There are "lines a demarcation" that are established with regard to line of sight and other fields of view and vision and whatever on a piece of property and this particular piece of property happens to be a corner parcel. And, those are guidelines, those are areas that an inspector would have to abide by and to some degree there may be some level of latitude, there may be some bending of the rules to some degree, but I think most of that could be interpreted as being very subjective. To be blunt, I want to say that to be purely objective, to be fair, and to abide by the Codes and that the "lines of boundaries" that are drawn just the same as if we were dealing with a conservation easement or a utility easement or anything else on a piece of property. For the most part, those lines are drawn in sand. Those are established boundaries and in fairness I see the Building Inspector doing his job. Going by what is before him to judge and standardize a situation like this. Going by the Code, the radius and all the other information that was given to us on the Zoning Board. So, although we may have a situation before us that renders itself somewhat in a grey area, I believe that the best the Building Inspector could do was to exercise his authority by the latitude he is given.

Chairman Wright: But, I think we can hear from the Building Inspector to see exactly what his position were on some of those things, too.

Mr. Maher: It's just that when you look at the sketch and you compare it to what was done out there, I respectfully disagree that I don't believe that it complies. Because like I said the other three sights that I sited those individuals did comply almost 100% with the Code and this site is barely 50% I would have to say. All they did was cut the trees – trim the trees that are in the curved portion of the property; not the 25 feet either way which is specifically called out in the Code. So in my professional opinion, if you are saying somebody is Code compliant they are complying. Not 50%, not 60%, not 80%. They are 100% or close to 100% compliant. This is not 100% compliant. Not now that they've also re-introduced trees into the area.

Mr. MacCartney: Could I ask a quick question?

Chairman Wright: Sure.

Mr. MacCartney: Mr. Maher, just to get clarity, in the packet that you submitted on this appeal I didn't see a document that was submitted in connection with the prior which I think Mr. Vasti was referring to, or one of the members was referring to where there was an overlay that you had laid onto an aerial with a red line in a curve.

Mr. Maher: I did that based on an assumption that if you make the assumption that the center line of pavement is the center line of the right-of-way, but the only way you can prove that is by having the property corners marked out. I never saw any markings out there that proved to be a property corner marker.

Mr. MacCartney: My question is, my question that I was leading into you prepared that document – that document was it based upon actual measurements of 25 feet with the different radiuses or was it not and then did you measure in the current application in terms of the actual radius from the street line and where the 25 foot markers or are you just going off of where the curves in the curb start and stop?

Mr. Maher: That's where – I used that both as a reference and from there the 25 feet straight on either side. The sketch that I made in my previous submittal was based on a couple of assumptions; one being that, again it was from Google Earth, I didn't have the ability to measure the actual width of the pavement. It's also based on the assumption that the center line of the pavement is the center line of the right-of-way and a lot of times there's even a lot of subdivisions here in Town where that is not the case. The center line is way off.

Mr. MacCartney: The Code – Sketch "A" in the Code speaks of the street line; not the right-of-way. It speaks of the street line. It looks like in your prior sketch you have it on the street line.

Mr. Maher: I think there's a designated line. I'm not quite sure exactly what that means. Whether it means right-of-way or edge of pavement.

Mr. MacCartney: Just to be clear...I guess I'm not trying to assert myself other than to get clarity so the Board is aware of what measurements you made and how that comports with the Code and if you could just speak to that or is it an eyeball based upon where the curve in the pavements start and stop. I mean the curve in the curb starts and stops – where you actually measured.

Mr. Maher: I used that as to match to that sketch. That the shape of the curb was the curvature; the curb section. Then I did 25 feet straight down and you look at the photographs there is nothing cut past that point. The trees in that curved area are cut. The other ones passed that point, passed the point where the road, the edge straightens out, are not cut.

Mr. MacCartney: On both streets; or on one street?

Mr. Maher: Both streets. There was some trimming of the branches done on Central Highway simply because anyone could see that they were an annoyance to people walking by and to Mr. VonHein's credit that was an appropriate thing to do. You would see a lot of people walking down the street; if they didn't know they were there sometimes you would see them duck quick as if they might get hit in the face with a branch. I'm not going to argue that point. The point I am arguing is that when you come to that straight edge on the roadway nothing was trimmed the way they were done in the circular area; the curved area.

Mr. MacCartney: I don't mean to – just for clarity for the Board, the photographs that you just passed out, the very first one, on the far right hand side of that photograph those trees have been trimmed. That is on the straight portion or is that an optical illusion.

Mr. Maher: That's on the straight portion, but again those are where the branches were trimmed so that they stayed behind the sidewalk. They were not trimmed flush to the trunk as stipulated on October 3rd. Mr. Sheehan gave an explicit description of how the trees were to be treated; that they were to be cut of all limbs from the ground up to 8 feet. The only trees that received that treatment are the ones in the curved section. None of the other trees were done that way. Again, I did point out that Mr. VonHein did trim the tree branches back off the sidewalk area, but the trimming was not done in conformance with Sketch "A" and the way it's called for in the Code and the way Mr. Sheehan described it at the October 3rd hearing.

Chairman Wright: So would you say then that the violation is only to the extent that they haven't - so there is small trees that were planted there...

Mr. Maher: Right.

Chairman Wright: You have a contending and then there are...is the rest of your assertion that the trees haven't been trimmed back the 25 feet.

Mr. Maher: That's correct on both sides.

Chairman Wright: If they were trimmed back that 25 feet would you still see that there was a violation there?

Mr. Maher: No, that would mean they were compliant with the Code. That's what I'm saying.

Mr. MacCartney: Is it your contention that the new plantings that you pointed out are themselves in violation or not in violation?

Mr. Maher: They are in violation. They are trees.

Mr. MacCartney: Because of the fact that they are trees.

Mr. Maher: Yes.

Mr. MacCartney: Is it your contention that the trees as cut back in the photographs, the limbs in the areas that they were trimmed and cut, the trunks still remain, but in those spots where they were cut they appeared to be denewted down to the trunk. At least, other than the very top of the tree. In your contention that those trees are in violation or not in violation.

Mr. Maher: No, no they are not in violation of the Town Code. They were properly trimmed in accordance with what Mr. Sheehan gave as a directive on October 3rd. I'm not saying that they were not properly treated.

Mr. Fox: A point of information, I believe in the prior meeting that we did have was between 3 and 8 foot – am I correct Mr. Sheehan? From our discussion wasn't it between 3 and 8 foot they would have to remove?

Chairman Wright: Let me read the Code just so we are kind of clear on this. This is Chapter 215, Article IV, Section XXIIIC – I got this off of E-Code.

No building or structure shall be erected within – sorry wrong one.

No shrubbery, hedge or other natural growth, fence or wall over 3 feet higher than the apex at the center line of the street shall be located within the triangle area shown in Sketch "A", below at the intersection of two streets, nor shall the limbs or foliage of any tree obstruct or be permitted to grow nearer to the ground than 8 feet where such limbs or foliage overhang or are over or upon land within the triangular area as shown in Sketch "A".

Mr. MacCartney: Just one more point of clarification for the Board. The new foliage that was planted that you submitted dated from the Cornell Cooperative Extension; they identified them as trees.

Mr. Maher: Yes.

Mr. MacCartney: If, for the Board's edification, if they had not been trees if shrubs instead of trees were planted in the same location as the same height as those that we see, but happen to be a different species, that was a shrub not a tree is it for the Board's understanding is it your contention that those would be in violation or not in violation?

Mr. Maher: No, if they were shrubs and they were less than 3 feet in height they would be full compliant.

Mr. MacCartney: Understood. Thank you.

Chairman Wright: Any other questions for Mr. Maher?

(no response)

Chairman Wright: Thank you Mr. Maher. Anybody else from the audience have any...Mr. Sheehan.

Mr. Sheehan: I would just like to comment on a few things. First, I would like to point out how an applicant gets before this Board. Under Town Law, Section 267A4 the only way an applicant can come before this Board is two ways:

1. They have an application pending before the Planning Board for a site plan or subdivision approval.
2. If an applicant is aggrieved by an actual decision or action taken by the enforcement officer.

Commonly an application before this Board is from a property owner that has been refused a Building Permit for a use or an area variance, or an area requirement, or a property owner has received a violation. Town Law Section 267A4 provides that such appeal maybe taken by a person aggrieved or by an officer, department, board or bureau of the Town. The appeal authorized by Town Law contemplates the existence of a conserversary regarding the decision to be reviewed and that the appealing party must have a real interest as an aggrieved party.

Since Mr. Maher is not a property owner or a taxpayer in Stony Point and does not have a real interest in this case, he cannot be considered an aggrieved party. Therefore, he has no "standing" and this Board should not hear this appeal. Generally, "standing" to challenge an administrative action turns on a showing that the action will have a harmful effect on the challenger and that the interest be asserted is within the Zone of interest to be protected by the statute and the harm must be direct and different from that suffered by the Public at large. See Village of Chestnut Ridge v Town of Ramapo, Second Department.

"Standing" a third party to challenge administrative agency actions even if an issue of vital public concern does not entitle a party to "standing". See Roth v.s. Sheldon.

In a case where an appealing parties interest is purely academic, as it is in this case and they are not an aggrieved party, but want to know whether a proper decision was made then the appealing party is seeking an advisory opinion from the Z.B.A. as to whether the decision was correct which is outside the scope of the Z.B.A.'s Appellate power. Gaylord's Disposal Service v Board of Appeals, Town of Kinderhook Department, 3rd Department.

When a "standing" issue is before the Board, the Board shall considered issue upon the onset of any appeal. Matter of Delaro, Coupe v.s. Walleye before any deliberation is done.

Therefore, I request that before I offer any information for the Town that the "standing" issue be ruled on. So what I am basically saying is, I don't believe Mr. Maher has "standing" to make an appeal. I believe Case Law requires this Board to make that determination prior to hearing the case and just for a footnote, I also believe Mr. Maher's application is defective as he failed to notify the administrative official of his appeal as is required by Town Law and Local Law.

So my bottom line is Mr. Maher is not an aggrieved party, therefore, cannot appeal my decision.

Chairman Wright: I just have one question for you.

Mr. Sheehan: Sure.

Chairman Wright: So in the meantime, and I am just trying to clarify, before you'll offer any other testimony you want us to rule on whether we think he is an aggrieved party or not?

Mr. Sheehan: Well what I am saying is I believe Case Law requires that this Board to determine "standing" prior to hearing the case.

Chairman Wright: Okay, just want to make sure.

Mr. Sheehan: I would be glad to come back if you wanted to extend the Public Hearing to seek advice from Counsel and make that decision and if you feel that you do have "standing" or Mr. Maher has "standing" I would be happy to answer any questions.

Chairman Wright: Anybody else from the community have any input in the Public Hearing? Please come forward and identify yourself.

Kimberly VonHein

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

Ms. VonHein: Yes. I just had a thought. He presented to you that he knew what kind of trees I had on my property. I would like to know how? I would like to see the evidence as to how he found out what I planted and if it is a concern of his how does he know what I planted. How does he know how tall I'm going to let it grow and what is it his concern? And when he discusses all the other corners which we should not be getting into because my corner is the issue here, if we are going to get to Washburns Lane, which is a four-corner intersection, which is far more serious than my corner – has accidents there all the time, even after those trees were done by the Code and stand "x high" I come out of that corner all the time I still have to edge into Washburns Lane to look both ways. There are still accidents going on over there. Pulling out on my side street a few feet past the tree line is not an issue. I've pulled up records of how many accidents have ever occurred on my corner because of my trees in the 18 years I'm there – none that had to do directly with my trees. What I am really asking right now, is I want to know how he got the information about what I planted on my property. Because we already know there's pictures by the tons of my backyard, my kids in the pool, etc. He has violated my privacy – I want to know how he knows what those trees are. I want to see the evidence.

Chairman Wright: It will all be part of the record, so...

Ms. VonHein: So I will be able to access my records and see that. Just like I asked on several other occasions how he gets close pictures of my backyard, etc. which I discovered was facebook. If I could press a restraining order, I'd like you to know, I would do so. I really don't have anything else to say. I didn't plan on speaking, but I do want to know certain information. Thank you for listening.

Chairman Wright: Any questions?

Mr. Vasti: Yes, I have a question for our attorney. Given the testimony Mr. Sheehan made, are you in agreement that the application before us is defective and that Mr. Maher has no "standing" in this issue?

Chairman Wright: My thinking is, I will let you go Mr. Vasti, I figure why don't we just go into Executive Session and undercover that and discuss that.

Mr. MacCartney: Yes, I think that is an appropriate issue for legal advice for the Board.

Mr. Vasti: Then I would like to make a motion at this time that we go into Executive Session to discuss the legality of this application.

Mr. Sheehan: Can I ask one question?

Mr. Vasti: Certainly.

Mr. Sheehan: Are you going to come back and vote on anything?

Chairman Wright: Tonight?

Mr. Sheehan: Yes.

Mr. MacCartney: There certainly would be motions to keep Public Hearings open or closed and it would be unlikely that the Board would render a decision tonight in accordance with its typical practice of closing a Public Hearing and waiting until the following meeting at the very least. So I would anticipate that there would be motions to either keep open or close the Public Hearing, but I would not anticipate based upon the Board's prior practice, at least personally, I would not anticipate it. I don't know if the Board feels that way.

Chairman Wright: Just a quick call – does anybody think we are going to make any decision on this tonight?

Board Members: Unanimously "No".

Chairman Wright: I don't we are going to do that Mr. Sheehan.

Mr. Sheehan: Okay, thank you.

Mr. Maher: Could I just make one statement – considering the Case Law that Mr. Sheehan has cited trying to say that I am not a person of "standing" to bring this case forward; I would like to have the opportunity to submit more documentation to refute what he's come to conclude. You can even look – I don't know if it's something I could state...

Mr. Sheehan: I think that is done with an Article 78, if that is the way the Board goes.

Mr. Maher: I'm not talking that route right now.

Chairman Wright: So why don't we...I don't think we will have a definitive motions tonight...let's keep this open next week and...

Mr. Maher: I would like that.

Chairman Wright: If any more information needs to be offered, we will allow an opportunity then.

Mr. Maher: Fine. I don't have a problem with that. Absolutely no problems.

Chairman Wright: We will do that then.

Mr. Maher: Thank you.

Mr. MacCartney: So it's the Board's pleasure to make a motion first to keep the Public Hearing open and thereafter go into Executive Session or go into Executive Session first and thereafter...

Chairman Wright: So why don't we make the motion...

Mr. MacCartney: So the people here know what...

Chairman Wright: So why don't we make the motion to keep the Public Hearing open and then we will continue it at our next scheduled meeting and then we will go into Executive Session.

*****MOTION:** Mr. Morlang made a motion to keep the Public Hearing open; seconded by Mr. Casscles. In favor: Mr. Morlang, Mr. Keegan, Mr. Casscles, Mr. Fox, Mr. Porath and Chairman Wright. Opposed: Mr. Vasti. The Motion was carried.

*****MOTION:** Mr. Keegan made a motion at 8:23 PM to go into Executive Session, pending litigation; seconded by Mr. Fox. Hearing all in favor; the motion was carried.

*****MOTION:** Mr. Fox made a motion at 9:04 PM to reconvene to regular Zoning Board of Appeals meeting; seconded by Mr. Vasti. Hearing all in favor; the motion was carried.

*****MOTION:** Mr. Vasti made a motion to accept the minutes of November 21, 2013; seconded by Mr. Porath. Hearing all in favor; the motion was carried.

*****MOTION:** Mr. Porath made a motion to adjourn the meeting of December 5, 2013; seconded by Mr. Fox. Hearing all in favor; the motion was carried.

Respectfully submitted,

Kathleen Kivlehan
Secretary
Zoning Board of Appeals