

**TOWN OF STONY POINT
Zoning Board of Appeals
Minutes April 18, 2013**

PRESENT:

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

ALSO PRESENT:

Stephen Honan, Attorney

Chairman Wright

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

We have about four items on the agenda tonight. What I would like to do is get through the first – it will be a little bit out of order. The first one is the request of the Town of Haverstraw.

Request of Town of Haverstraw – App. #13-02

Interpretation and appeal of the Town of Stony Point Building Inspector’s decision in regards to permitted use, located at the east end of Holt Drive, 1800 feet and the east end of South Liberty Drive/Route 9W, (also known as Hudson River View Industrial Park Building D) (property), for the proposed gasification plant.

Section	20.02	Block	11	Lot	25	Zone	RR
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The attorneys have agreed to postpone the continuance of the Public Hearing until May 16th, so without an objection we will go ahead and bring it back up on the 16th of May.

Next on the agenda, are the two new applications. The first is the request of Anthony and Joseph DePalma.

Request of Anthony and Joseph DePalma – App. #13-05

A variance from the requirements of the Town of Stony Point Zoning Code Chapter 215, Article V, Section h.1-6 Less than required rear setback; required 35 feet provided 6 feet, located at 12 Laurel Drive, Stony Point, New York, for the construction of a deck.

Section	20.06	Block	2	Lot	29	Zone	
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*****MOTION:** Mr. Morlang made a motion to place Application #13-05 on the May 2, 2013, agenda for a Public Hearing; seconded by Mr. Fox. Hearing all in favor; the motion was carried.

Chairman Wright: Is the applicant for the project present?

Unidentified Male: Yes.

Chairman Wright: Is there anything that the Board is looking for from the applicant before we move onto the next item on the agenda?

Mr. Casscles: No, we just need to set a site visit.

Chairman Wright: Okay. The site visit is set for April 28th.

Chairman Wright: The next item on the agenda is the request of the Goldsmith Family Trust, Stuart.

Request of Goldsmith Family Trust, Stuart – App. #13-04

A variance from the requirements of the Town of Stony Point Zoning Code:

Chapter 215, Article IX, Section 215-52 B-2: Installing more than one sign on building; Permitted one sign installing 2 signs;

Chapter 215, Article IX, Section 215-52 B-3: Vertical height permitted 2.5 feet; provided 7.5 feet;

located at 150-176 South Liberty Drive, Stony Point, New York, for Aldi signs on building.

Section 20.04 Block 11 Lot 1 Zone BU

Chairman Wright: Is the representative for the applicant here?

Unidentified Male: Yes.

Chairman Wright: I will take a motion to place this on the agenda.

*****MOTION: Mr. Fox made a motion to place Application #13-04 on the May 2, 2013, agenda for a Public Hearing; seconded by Mr. Casscles. Hearing all in favor; the motion was carried.**

Chairman Wright: We will have a site visit on April 28, 2013. Is there anything else that the Board would like to know from the applicant before the meeting on May 2nd?

Mr. Casscles: Is somebody going to be there to explain it? Do you represent Aldi?

Unidentified Male: Yes, I am the attorney.

Mr. Casscles: Can you make sure someone is there on the 28th to go over this so we can have someone to answer the questions we might have?

Ms. Kivlehan: The 28th is a Sunday.

Unidentified Male: Can you tell me what time?

Chairman Wright: We normally get there about 8:15. We gather around 8:00 and it takes us a few minutes to get there. So I would say between 8:00 and 8:15 we will be there.

Unidentified Male: In the morning, correct?

Chairman Wright: Correct.

Unidentified Male: I will make sure somebody is there.

Chairman Wright: Any other questions or any other information the Board needs before then? If not, we will move on to the last item on the agenda which is a decision for the request of Gerry Puccio.

Request of Gerry Puccio, Forty Four South Liberty Drive Association, LLC - App. #13-03

A variance from the requirements of the Town of Stony Point Zoning Code:

Chapter 215, Article V, Section 15A-B-4 - Less than required front yard, required 15 feet, provided 0 feet;
Chapter 215, Article V, Section 15A-B-4 - Less than required front set back, required 40 feet, provided 34.0 feet;
Chapter 215, Article V, Section 15A-B-6 - Less than required rear set back, required 25 feet, provided 1.5 feet;
Chapter 215, Article V, Section 15A-B-7 - Less than required rear yard, required 10 feet, provided 0 feet;
Chapter 215, Article V, Section 15A-B-7 - Less than required side yard, required 10 feet, provided 0 feet;
Chapter 215, Article V, Section 15A-B-10 - Development coverage, maximum 75%, provided 80%; and
Chapter 215, Article 1X, Section 52-B-5 - Maximum allowed sign coverage, 80 square feet, requesting 100 square feet,

located at 44 South Liberty Drive, Stony Point, New York, for the construction of a commercial building.

Section 20.07 Block 3 Lot 63 Zone BU

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

In the Matter of Application #13-03 of Gerry Puccio/44 S. Liberty Drive Associates on referral from the Town of Stony Point Planning Board to grant the following variances from the requirements of the Town of Stony Point Zoning Code in connection with the construction, maintenance and use of a commercial building on property located at 44 South Liberty Drive, Stony Point, New York, designated on the Tax Map as Section 20.07, Block 3, Lot 63:

Chapter 215, Article V, Section 15A-B-4 - Less than required front yard, required 15 feet, provided 0 feet;
Chapter 215, Article V, Section 15A-B-4 - Less than required front set back, required 40 feet, provided 34.0 feet;
Chapter 215, Article V, Section 15A-B-6 - Less than required rear set back, required 25 feet, provided 1.5 feet;
Chapter 215, Article V, Section 15A-B-7 - Less than required rear yard, required 10 feet, provided 0 feet;
Chapter 215, Article V, Section 15A-B-7 - Less than required side yard, required 10 feet, provided 0 feet;
Chapter 215, Article V, Section 15A-B-10 - Development coverage, maximum 75%, provided 80%; and
Chapter 215, Article 1X, Section 52-B-5 - Maximum allowed sign coverage, 80 square feet, requesting 100 square feet,

The premises which are the subject of this application are located 725 feet south of High Avenue on the east side of South Liberty Drive in a BU Zoning District.

The applicant was represented by David Zigler and the following documents were placed into the record and duly considered:

Application; January 31, 2013 and February 25, 2013 memoranda from Thomas Gubitosa; plans and renditions of site and proposal, including Cover Sheet last revised February 7, 2013 and color exhibits; April 8, 2013 letter from Rockland County Department of Planning; Correspondence from Town Planner;

Additionally, members of the Zoning Board of Appeals personally visited the applicant's property and viewed it and the neighboring properties on or about February 2, 2013, with the Stony Point Planning Board.

WHEREAS, the Town of Stony Point Planning Board has declared this matter a Type II Action pursuant to the New York State Environmental Quality Review Act; and

WHEREAS, a public hearing was held on April 4, 2013, at which time the testimony of the following persons was duly considered: Mr. David Zigler; and

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

The subject parcel is an irregular lot located in the Town's commercial corridor on Route 9W, also known as South Liberty Drive. The lot has been improved since approximately the 1960s with a gas station including an existing commercial structure, which the applicant proposes to redevelop and expand into a "7-11" convenience store. The original parcel was reduced in size in the 1970s due to takings to facilitate the widening of Route 9W. The existing structure in the center of the property abuts the property line in the rear, and was constructed prior to the presently existing zoning code.

The present structure on the property is in a state of disrepair, the tanks and islands have been removed, and the property has been vacant for the past 4 to 5 years, approximately. The applicant purchased the property and proposes to construct a larger building in the same location which upgrade the property as a whole and add only approximately 250 square feet of commercial floor space to the existing building.

The construction of the new building requires a variety of variances, as detailed in the application, including front yard, front set back, rear set back, rear yard, side yard, and development coverage. For the most part, the variances requested for the new building would be the same variances required were the existing building proposed today in the same location, and, in some cases such as the rear yard and rear setback, the applicant actually proposes to improve on existing conditions by moving the new building away from the rear property line.

In other words, it is not as much the expansion of the existing building that requires the variances, as it is the restrictive irregularity of this unique lot itself. Even the old, existing building would not fit in the building envelope permitted by the code enacted after its construction. The new proposed building cannot be feasibly constructed in any other location on the site, given the irregularities of the lot. For example, the variance from 40 feet down to 34 feet in the front is required because the building cannot be moved back or to the side because of parking, garbage, and handicap issues, and the buffer variances in the front yard are necessary because if the code were complied with, proper vehicular access would not be possible.

In regard to impervious coverage, to meet the Code would require the loss of a parking space and on balance given the nature of the use sought and the fact that the variance sought is only 5%, the benefit to the applicant and the public of having the extra parking space outweigh the detriment of the loss of 5% in impervious coverage, particularly given the mitigating other improvements on the site.

Overall, the applicant proposes to make significant improvements to the site and building, including setting the building higher, meeting current safety codes, improving ingress and egress to the site, handicap grades, etc. In other words, many things that a building constructed in the 1950s or 60s was not required to have (and does not presently have), the new proposed building would have. Overall, it is proposed to be a significant improvement on the existing site, including landscaping that does not presently exist. All the variances that are requested are the minimum necessary.

The applicant also requests a variance from the regulations governing maximum allowed sign coverage. The original gas station had a sign at both ends of the property; one at the south end of the property plus a pylon sign at the north end. The new plan requests only one pylon sign rather than two, and proposes it to be 100 square feet, which exceeds the current code maximum of 80 square feet. However, because of the elimination of the other sign, the proposal is actually for a net reduction in the signage that had been on the site for decades.

The applicant has been working with the Town Planning Board and the professionals hired on behalf of the Town to examine and analyze various different proposed variations of the redevelopment of the site. It is only after that consultation and cooperation, that the Town Planning Board and its engaged professionals, including the Town Planner, Stuart Turner, have agreed upon the current proposed location and configuration, and the matter was referred here on recommendation of the Planning Board.

The Board is in receipt of correspondence from the County of Rockland Department of Planning dated April 8, 2013, and has reviewed and considered all statements and recommendations set forth therein. In paragraph 1, County Planning recommended disapproval of the sign variance, and in paragraph 2.1 recommended modification of the front yard, front setback, development coverage and “parking” variances. It should first be noted that there is no parking variance requested in the application before this Board, but it is believed that parking is an issue still being discussed before the Planning Board, so the Zoning Board has no jurisdiction over that recommendation from County Planning. In regard to the recommendations set forth in paragraph 1 and 2.1, this Board feels it appropriate to override same based upon the fact that the proposal reduces the square footage of signage existing on the site as set forth herein, all the other mitigating facts set forth herein, and the fact that application meets the applicable criteria under the New York State Town Law for the variances requested. In regard to the recommendations in paragraph 2.2 and 2.3 concerning compliance with the March 7, 2013 letter from the New York State DOT and the February 21, 2013 letter from the County Drainage Agency, the said correspondences were addressed to the Planning Board and concern matters within the jurisdiction of the Planning Board.

No objection has been submitted to any of the variances requested.

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

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

There is no evidence presented that the proposed variances would produce any undesirable change in the character of the neighborhood or a detriment to any nearby properties. To the contrary, the sum total of the improvements proposed by the applicant render the project a net benefit in all relevant respects.

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

There is no evidence presented of any other feasible means to achieve the benefit sought given the irregularity of the site, except insofar as the signage is concerned.

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

The variances sought are mathematically substantial, with the exception of the development coverage variance, but the existing conditions of the neighborhood, the fact that the building has existed in this same location, albeit slightly smaller, since the 1960s, are mitigating factors, as is the fact that the proposal is for a net reduction in sign square footage.

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

There is no evidence before this Board of any such potential adverse impacts.

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

The alleged difficulty was self-created only in the sense that the applicant was aware at purchase of the Zoning Code and existing conditions, but the need for the area variances requested is largely created by the irregular nature of the lot, the fact that the existing building preexisted the code, the fact that the lot was reduced in size by takings from the State of New York in the 1960s and 70s, and the desire of the applicant to improve the lot in all relevant respects.

NOW, THEREFORE, BE IT RESOLVED, that the application of Gerry Puccio/44 S. Liberty Drive Associates on referral and recommendation of the Town Planning Board to grant the variances as set forth above and as set forth in the application submitted herein, are hereby granted, upon compliance with the terms and conditions of this resolution, on the condition that the applicant does not deviate materially from the plans submitted and upon which the Board has relied in granting the variances requested, and on the condition that the applicant comply with all other applicable laws, rules and regulations, and the matter is remanded back to the Planning Board for any and all further proceedings herein in conformity with law.

Upon roll call, the vote was as follows: Mr. Morlang, yes; Mr. Keegan, yes; Mr. Casscles, yes; Mr. Vasti, absent; Mr. Fox, yes; Mr. Porath, yes; and Chairman Wright, abstain.

Chairman Wright: The last item on the agenda is the minutes of March 21, 2013.

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

*****MOTION:** Mr. Morlang made a motion to adjourn the meeting of April 18, 2013; seconded by Mr. Porath. Hearing all in favor; the motion was carried.

Respectfully submitted,

Kathleen Kivlehan
Secretary
Zoning Board of Appeals