

**TOWN OF STONY POINT
Zoning Board of Appeals
Minutes March 6, 2014**

PRESENT:

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

ALSO PRESENT:

Alak Shah, Attorney

Chairman Wright

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

We have a few things on the agenda tonight. We will start out with a request of James Coyle.

Request of James Coyle – App. #14-02

A variance from the requirements of the Town of Stony Point Zoning Code Chapter 215, Article V, Section 15A D.1-4; Less than required Front Yard/Front Setback – required 50 feet, provided 38 feet (CORNER LOT) for a side and rear deck and Chapter 215, Article V, Section 15A D.1-4; Less than required Front Yard/Front Setback – required 14.7 feet, provided 7 feet for a front porch and steps at 5 Lakeview Drive, Tomkins Cove, New York.

Section	10.01	Block	1	Lot	51	Zone	RR
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*****MOTION:** Mr. Casscles made a motion to place Application #14-02 on the April 3, 2014, agenda for a Public Hearing; seconded by Mr. Vasti. Hearing all in favor; the motion was carried.

Chairman Wright: So just real quick and Mr. Coyle we really don't need anything from you tonight, but I want to make sure that everybody on the Board looked at the application. Is there any information you might want to get from Mr. Coyle before we go to the next step then.

(no response from the Board)

Chairman Wright: Is there anything in particular you want to address the Board before this – it is not a Public Hearing. We are just accepting this and what we are going to do is we will have a site visit on the last Sunday, that would be March 30, 2014, and then we will put it on the agenda for the first meeting that we have in April.

Mr. Casscles: If you could have it marked out, it would be great.

Mr. Coyle: Whereabouts?

Mr. Casscles: Where you are going to put it – the setback and everything.

Mr. Coyle: On the 30th you are talking, sir?

Mr. Casscles: Yes.

The applicant was represented by Ralph Heavner, Esq. and the following documents were placed into the record and duly considered:

Application; February 7, 2013 Letter from the Building Inspector; survey and map; County of Rockland Department of Planning letter dated January 2, 2014; County of Rockland Department of Highways letter dated December 30, 2013; contract with Hua Shun Sign Inc.; January 7, 2014 letter from attorney for applicant requesting adjournment of public hearing to February 6, 2014.

Additionally, members of the Zoning Board of Appeals personally visited the applicant's property and viewed it and the neighboring properties on or about December 29, 2013.

WHEREAS, this is a Type II action under the New York State Environmental Quality Review Act; and

WHEREAS, a public hearing was held on February 6, 2014, at which time the testimony of the following persons was duly heard: Ralph Heavner, Esq. as attorney for the Applicant; and William Sheehan, Town of Stony Point Building Inspector.

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

The applicant is the lessee of the subject parcel, which sits adjacent to the Farley Bridge on South Liberty Drive, also known as Route 9W. The applicant's business is a Chinese take-out restaurant. In recent years, New York State instituted a protracted road widening project and complete reconstruction of the Farley Bridge which not only substantially interrupted the business operations of the applicant during construction, but also took from it several parking spaces which had previously been located at the front of the building, between the building and Route 9W. As a result, the applicant has endured a considerable economic hardship over the course of three-plus years, because of both the construction and the consequent decrease in its business operations, particularly given the loss of parking spaces. Over two years went by with the usual robust traffic heading north and south on Route 9W in front of the applicant's premises disappearing and/or substantially decreasing due to the bridgework and reconstruction work. Additionally, because of the new, much closer proximity of the storefront to Route 9W after the road widening, and the location of a telephone pole, the applicant is unable to advertise its business through signage at or about the curb line. Any such signage would likely present sight line obstructions to motorists and would otherwise be contrary to code or infeasible. Therefore, the restaurant's primary, if not only, means of advertising itself to its remaining, but substantially decreased customer base following the extensive road construction project, is through signage on the storefront itself visible enough to those passing by to attract them into this take-out Chinese food business. The signage for which approvals are sought herein has been characterized as critical to the future survival of the business.

The applicant hired a sign company from Manhattan to install a new awning with signage on the front of the building. The applicant claims to have relied upon the sign company to obtain any and all necessary approvals and permits for the signage and to ensure same complied with code. The applicant paid that sign company \$3,100.00 for the design, manufacture, and installation of a custom built awning and sign.

The applicant was subsequently notified by the Town Building Department that the signage installed was in violation of the Stony Point Code in two ways. First, the lettering on the front of the awning facing Route 9W states two words, "Yummy's Take-Out." The Building Inspector measured the square footage on each word to total 80 square feet, but only 40 feet are permitted by code. Second, because there are two words on the awning, the Building Inspector considered them to be two separate signs. The Building Inspector explained that he could have considered it just one sign, but then would have been required to also compute the square footage of the empty space between the two words, thereby increasing the square footage of the sign even more.

The applicant now presents this application for an area variance for relief from the foregoing code violations, asserting a substantial financial impact upon its business operations were it to have to pay someone to take down the awning and then design and reconstruct and install a new one, after having already paid \$3,100.00 for the existing sign. The applicant further alleges that the business cannot survive without the prominent signage sought, given the changes brought upon the property by the recent construction, particularly given its primary business is Chinese take-out.

The County of Rockland Department of Planning issued a letter dated January 2, 2014, recommending disapproval of the application on the ground that the Town's zoning standards are reasonable and that the variances sought could set a precedent and result in a proliferation of oversized signs with a potentially adverse effect on traffic flow.

The Board finds that the Department of Planning provided no traffic study or other evidence of any kind that a sign of this size, type, and location along the facade of this building would have any adverse effect whatsoever on the safe and efficient flow of traffic along Route 9W in any way. Indeed, the awning itself is compliant with the Zoning Code. Further, the County of Rockland Department of Highways wrote in its December 30, 2013, letter on this application that the sign should have a minimal impact on the County highway system. Finally, given the unique circumstances surrounding this particular property, its use is a Chinese take-out restaurant, its location and configuration being immediately adjacent to the Farley Bridge in a location which had just undergone a significant road widening thereby removing multiple parking spaces and making other signage either illegal or infeasible, the precedential effect of a grant or denial of this application upon other future applications is negligible, if not entirely nonexistent.

No objection has been submitted from the owners or occupants of any property adjoining or nearby the premises or any other members of the public in general for that matter.

WHEREAS, this Board has examined the written documentation and reviewed the testimony with respect to the applicant's request for a variance, and, pursuant to the requirements of section 267-b.3 of the Town Law, hereby finds that the benefit to the applicant if the 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, particularly given the building's size and location within the BU Zoning District. There are many other signs up and down that commercial corridor which are of the same size or larger than the one sought herein.

(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":

The benefit sought by the applicant could be achieved in some measure by signs that fully comply with the existing Zoning Code without the need for variances. The awning or lettering would have to be removed and reconstructed at considerable expense. Importantly, however, the unique circumstances which have befallen this particular business in this particular location over the course of the last 3-plus years render it infeasible for the applicant to sufficiently advertise his particular Chinese take-out business with the same effectiveness by using other signage.

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

The variances sought with respect to the square footage are certainly substantial, as they are double the permitted square footage. However, the lettering is on an awning which is itself colorful and large but compliant with the Zoning Code. There is very little additional impact to be caused by the lettering, separate and apart from the compliant awning itself. In regard to the variance sought for two signs when only one is permitted, the practical reality of this particular application is that it is really just one sign; it is two words that go together but which are separated by a space, so the variance is not substantial in that regard.

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

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

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

Even though the applicant believed the sign company was responsible for ensuring Code compliance, it remains the applicant's sole responsibility at all times to ensure compliance with the Code. Thus, the difficulty was self-created in that respect, but the applicant had no control over the circumstances described above involving the reconstruction of the Farley Bridge and widening of the roadway.

NOW, THEREFORE, BE IT RESOLVED, that the application of Yummy Chinese & Sushi, Inc. for variances from the Town of Stony Point Zoning Code Chapter 215, Article IX, Section 52-B-2 as set forth herein is hereby approved, on the following conditions:

1. That the signs shall not exceed the dimensions set forth herein; and
2. That if the existing signs require replacement or reconstruction in the future, the variance shall automatically expire; in order to replace or reconstruct the existing signage with anything other than signage that complies fully with the then-existing Code, the applicant shall be required to re-apply to this Board for variances.

This matter is hereby remanded and referred back to the Building Department for any and all further proceedings herein in conformity with law and consistent with this Resolution, including but not limited to appropriate review of the application and existing signage for compliance with applicable Building Code provisions and standards prior to the issuance of a Building Permit.

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

Chairman Wright: The last item on the agenda...well there is two more items on the agenda. One of them is the continued 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: Was there any activity on that?

Ms. Kivlehan: There is a letter from Mr. Cohen stating that he wanted to “withdraw” the application.

Chairman Wright: So...let’s do this. I will take a motion to close the Public Hearing.

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

Chairman Wright: So now at this point if he wants to “withdraw”; it we will just do that. At this point we just have to close the application or the Public Hearing and we will go from there.

*****MOTION:** Mr. Vasti made a motion to accept the minutes of February 6, 2014; seconded by Mr. Porath. Hearing all in favor; the motion was carried.

*****MOTION:** Mr. Fox made a motion to accept the minutes of February 20, 2014; seconded by Mr. Anginoli. Hearing all in favor; the motion was carried.

*****MOTION:** Mr. Vasti made a motion to adjourn the meeting of March 6, 2014; seconded by Mr. Casscles. Hearing all in favor; the motion was carried.

Respectfully submitted,

Kathleen Kivlehan
Secretary
Zoning Board of Appeals