

**TOWN OF STONY POINT
ZONING BOARD OF APPEALS
Minutes of June 16, 2022**

PRESENT:

Mr. Keegan
Mr. Anginoli
Mr. Lynch
Mr. Strieter
Mr. Gazzola
Ms. Davis
Chairman Wright

ALSO PRESENT:

Dave MacCartney, Attorney
John Hager, Building Inspector

Chairman Wright: Good evening. Welcome to the Stony Point Zoning Board of Appeals. I call this meeting of June 16, 2022, to order. Please rise for the Pledge of Allegiance.

The Pledge of Allegiance was recited, and roll call taken.

Chairman Wright begins the meeting with a new application for the request of Shamsi Fani & Miguel Reynoso Menieur-46 E. Main St-App. #22-07 (Area Variance)

DECK: creating/building deck from kitchen sliding door into backyard approx. 14ft

Chapter 215, Article V Bulk Requirements, Section 215-15 A Bulk Table part II (215 attachment 16), column 6 Required Rear Setback

Minimum rear setback required = 35'

Rear setback provided = 28'

Variance necessary = 7'

Section: 20.07

Block: 3

Lot: 21

Zone: R1

Chairman Wright called for the applicant or representative of to please come forward.

Shamsi Fani, 46 E. Main St, addressed the Board. She explained her plans to build an enlarged deck off of the kitchen sliding glass door for more enjoyable outdoor living space. She went on to explain that when speaking to the Building Inspector, John Hager, he advised she would need additional space to be granted by the Zoning Board.

Chairman Wright asked if anyone has any questions. Mr. Keegan asked if there are any other sets of plans aside from the sketch provided. She responded that she had provided the original plans to the building department, which had been misplaced internally. The sketch provided was what she had submitted on June 16th, today, for the Board.

Ms. Pechin has the documents, however, she had to miss tonight's meeting due to a family emergency.

Mr. Streiter asks Ms. Fani about the measurements on the survey differing from what is shown on the plans. She added that Mr. Hager advised her that the survey she originally had was an older copy than what the building department had on file.

Chairman Wright and the other members of the Board agreed to accept the application and review the documents later to prepare for the public hearing.

*****MOTION: Mr. Keegan made a motion to accept the application; seconded by Mr. Streiter. All in favor; the motion was carried.**

Chairman Wright advises Ms. Fani that the site visit will be held on June 25th at 9am.

Chairman Wright continues the meeting with a decision of the request of Hugo Pino, 21 Blanchard Rd – App. #22-01 (Appeal/Area Variance)

****The decision was read as follows:**

On June 16, 2022, the following resolution was offered by Mr. Lynch, seconded by Mr. Keegan and carried, based upon the evidence in the record:

BOARD OF APPEALS
TOWN OF STONY POINT, COUNTY OF ROCKLAND

In the Matter of Application #22-01 of Hugo Pinos for an area variance from the requirements of Chapter 215, Article VIII - accessory parking and loading requirements - to permit the parking of four commercial vehicles on a developed lot in a residential district, on premises located at 21 Blanchard Road, Stony Point, New York, designated on the Tax Map as Section: 19.01 Block: 1 Lot: 18.3 in the RR Zoning District.

WHEREAS, the applicant was represented by Christopher Martone, Esq.; and

WHEREAS members of the Zoning Board of Appeals personally visited the applicant's property and viewed it and the neighboring properties; and

WHEREAS, a public hearing was duly opened and commenced on March 17, 2022, and concluded and was duly closed on May 19, 2022; and

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

The applicant, Mr. Hugo Pinos, is the owner of the subject property located at 21 Blanchard Road, which is wholly located in the Rural-Density Residential (RR) zoning district. The applicant is also the owner of Rose Landscaping & Construction Corp., a commercial landscaping and general contracting business.

Mr. Pinos lives in a single-family home on the subject parcel. That same residential parcel also serves as the base of operations for his contracting business, Rose Landscaping, notwithstanding that it is in a rural low-density residential zoning district, which is what gives rise to the current application.

In March 2021, the Town of Stony Point Building Department issued a Notice of Violation and Order to Remedy, arising out of the applicant's commercial use of this parcel in this residential district. The applicant was observed to have been storing multiple commercial vehicles and many pieces of commercial equipment, supplies, and building materials used exclusively for his contracting business on the subject premises. The Building Department alleged in its notice of violation that the applicant was utilizing the property contrary to Code in many respects, including that the applicant was utilizing the premises illegally as a Contractor Storage Yard in violation of § 215-88 of the Zoning Code; was parking substantially more than the one permitted commercial vehicle on this developed lot in a residential district in violation of § 215-39(A) of the Zoning Code; was operating a commercial business which is prohibited in the RR zone; was not maintaining the property in a clean, safe, and sanitary condition, in violation of § 302.1 of the Property Maintenance Code of the State of New York; and had removed or placed greater than 100 ft.³ of fill without permission of the Town Engineer in violation of Zoning Code § 215-9(H).

After the violation notice was issued, the applicant filed an application before this Board for a use variance, in which the applicant attested under oath that he was using the subject parcel to save money in connection with his commercial operation. Specifically, he confirmed that, among other things, parking his commercial trucks on his residential lot was saving him up to \$12,000 per year and that he was otherwise benefitting from utilizing this residential lot for his commercial purposes.

The applicant appeared before the Board in connection with his use variance application several times, and in connection with that application, an objection was received from the Town of Haverstraw (the neighboring municipality) pursuant to its review under the General Municipal Law (GML), by a letter from its planning and development consultant dated September 20, 2021 objecting to the use variance for numerous reasons, including its inconsistency with the established residential character of the area, its inconsistency with the stated purpose and intent of the zoning ordinance, the truck traffic generated from the use, its proximity to other low density residential uses, the possibility that the disturbance and development of this area may cause storm water runoff impacts to neighboring properties, etc. Likewise, the County of Rockland Department of Planning ("County

Planning”) issued a GML review letter dated October 6, 2021, disapproving of the application for numerous reasons.

Ultimately, the applicant then withdrew that use variance application by way of a letter from his attorney, Christopher Martone, Esq. dated December 2, 2021.

On January 2, 2022, the Town Building Department issued another Notice of Violation and Order to Remedy, setting forth the continued observation that the applicant was engaged in commercial business activity relating to among other things the storage of landscaping vehicles and equipment on this residential parcel. The applicant was ordered to limit the parking of commercial vehicles to just one, the maximum permitted by Code, and was ordered again to cease all commercial/business activity on these residential premises, including the gathering of the applicant's work force and loading and unloading of the applicant's commercial vehicles, and ordered the applicant to no longer receive deliveries and pick-ups of supplies, materials, etc.

On January 20, 2022, the applicant submitted a new application to this Board. This time, rather than applying for a use variance, the applicant applied for an area variance seeking to allow him to park a total of four commercial trucks on this residential lot (three more than the permitted one commercial vehicle in this residential district, pursuant to Town Code § 215-39(A)). The application was submitted under the guise of an area variance on the apparent theory that the relief sought was merely a numerical or dimensional bulk matter rather than one related to the use of the property. In other words, the applicant was stepping around the use variance standards to achieve the benefit sought by instead applying for an area variance to allow four times the number of commercial vehicles to park there than permitted by Code.

The applicant appeared before the Board on February 3, 2022, at which time the public hearing was scheduled for March 17, 2022. The application was referred to County Planning for the required GML review, and County Planning responded by letter dated March 10, 2022.

In its March 10 letter, County Planning disapproved the application. Among other things, County Planning stated in its disapproval letter, and this Board agrees, that the storage of multiple commercial vehicles as requested is a commercial use of the property and falls squarely within the definition of a Contractor Storage Yard under the Town Zoning Code. County Planning confirmed in its letter that the storage of four commercial vehicles in connection with the applicant's contracting business cannot be accomplished via an area variance since the essential character of use to which the applicant was putting and was proposing to put the property was a prohibited use. Permitting a prohibited use can be accomplished only through a use variance, not an area variance. The numeric nature of the regulation limiting commercial vehicles to only one on a residential lot (§ 215-39) is not a bulk requirement from which an area variance can provide relief. Rather, that section provides relief for residents by allowing a specific limited accessory use on a residential property. The numeric limit is not intended to establish a dimensional or physical requirement, but, rather, to maintain the accessory nature of the use. Stated otherwise, exceeding the numeric limits for parking of commercial vehicles in a residential zone is not in the nature of relaxing a physical requirement, but altering the very nature of the use to which the property is being put. County Planning disapproved on these grounds as well as others as set forth in its letter.

During the public hearing, numerous photographs were admitted into evidence and considered by the Board, and the Board members who visited the property multiple times testified regarding their observations of the subject conditions.

The applicant argued that the nature of the property was unique, in that the area where the residential home is located is down on one level and is accessed from Blanchard Road, while there is a separate access easement up to an elevated portion of the property which the applicant has filled, leveled, graded, and improved substantially to become what is essentially a large open graveled parking area and construction yard. It is clear that a substantial amount of work was done without any permits or permission from the Town, including its Engineer, to bring in fill, grade, and improve that part of the residential parcel for use exclusively in the applicant's prohibited commercial operation on this residential lot. The Board members observed large numbers of vehicles and equipment stored on that part of the subject parcel, which is accessible via a narrow access easement that the Board

learned during the hearing was paved by the applicant himself or his contracting company at his cost, for the benefit of servicing not only his contractor storage yard in that location, but which also directly benefitted the nearby neighbors who use the same road to access their property. Somewhat unsurprisingly, those neighbors who benefited from the applicant paving and maintaining this narrow easement road at his own cost, not theirs, appeared at the hearing and spoke in favor of the application.

The vehicles and equipment observed are documented in the numerous photographs made part of the record. They include a large commercial box truck, a large dump truck with a similarly large equipment trailer attached, spanning well in excess of 25 feet combined, at least three other commercial dump trucks and pickup truck(s), a large gray storage container, an open-air exterior trailer with various contracting equipment located upon it, a myriad of construction equipment, including ladders, excavators, blowers, what appears to be paving equipment, front end loaders or bulldozers, as well as piles of construction related supplies, tools, and materials.

At the public hearing, the applicant confirmed that the hardship for which he was seeking relief related specifically to the operation of his small business, stating that his business was too small to be in a big place, and too big to be at his own house. He admitted that he created this commercial yard area on part of his residential property (at a different higher elevation that is somewhat visually and topographically separated from the area containing his house), for the purpose of assisting him in saving money for his contracting business.

The applicant admitted that the essential nature of what he was expecting to use the property for was the same commercial use to which he is illegally putting the property now, i.e., a base of operation for his commercial business. His use also falls within the definition of a Contractor Storage Yard (defined under § 215-5 of the Zoning Code as “A building or area of land where a person, firm or corporation engaged in the construction business, or a related field, stores building materials, equipment and supplies used exclusively in his business as a contractor.”), which is not permitted in the RR zone (it is only allowed by special permit from the Planning Board in the LI Zone - see § 215-88).

The Board members expressed on the record their own observations as to what they saw on the premises, and that by any measure, the applicant was clearly using the property for commercial purposes and as a prohibited Contractor’s Storage yard. The applicant stated through counsel that he would agree to store all his commercial equipment inside the trailers and trucks that he was asking permission to park on the property, or in a storage shed down on the residential part of the premises, if the relief sought were to be granted. However, the Code makes no distinction between storing commercial contracting equipment and materials inside commercial trailers and trucks or outside them.

Quite clearly, the applicant’s proposed use of the property is proposed to remain one of a commercial nature, to be operated as landscaping and contracting business. The applicant is proposing to clean up the area a little, make it look neater with some landscaping, limiting the number of commercial vehicles to four (later reduced to three – see below), and possibly storing some of the materials inside the trucks, trailers, and a shed. The Board members expressed that the use to which the property is being put and to which it was proposed to be put, including the number and types of vehicles stored there, fundamentally changes character of the neighborhood for the negative and alters its essential rural low-density residential character.

The applicant returned for continuation of the public hearing on May 19, 2022, at which time he presented a plan that showed a reduction in the size of the leveled gravel space where his commercial contracting business operates and where he has been operating this Contractor Storage Yard. He also reduced his request to three commercial vehicles as opposed to the originally requested four.

Photographs of the fill that had been brought in and the erosion that is occurring between the upper area where the contractor storage yard was created and the lower area where the residential home is located were put into the record. The filled area and the consequent erosion occurring to date could be clearly seen, along with the steep slopes relating to same. The applicant addressed this by stating his agreement to fix or shore up this area to prevent further erosion but provided no details in that regard.

Additionally, the Building Inspector produced another photograph and explained his observations from that same morning showing the applicant parking and/or storing one of his commercial landscaping construction container/trailers in the front yard in his driveway down by his house. The applicant asserted that the trailer was in that location because the applicant was performing some light construction on the applicant's own property in that location and was there only temporarily. However, it was not hitched to any vehicle. Either way, the parking or storing of that commercial trailer/container in that location is illegal under the Code and therefore constituted yet another, new zoning violation.

Also, in the interim, the applicant moved much of the equipment, materials, and vehicles off site. However, when the Board inquired as to where these items had been moved and whether those items could be permanently kept wherever they now are instead of on the site, the applicant would not identify where any of those materials currently are or whether they could indeed permanently remain away from the property. When asked whether the trailers the applicant was proposing to park on the property would be empty moving forward, the applicant confirmed that they would not, but instead the commercial contracting equipment and materials he used in the business would be stored inside them.

WHEREAS, this Board has examined the written documentation and reviewed the testimony with respect to the applicant's request for a variance, and hereby makes the following conclusions:

First, the Board agrees with County Planning and sees no proper grounds upon which to override the County's determination pursuant to the requirements of the GML. The request for approval for four (or three as amended) commercial vehicles on this property under all the circumstances is not achievable by way of an area variance. Approval for such parking would be fundamentally altering the use of the premises from residential to commercial; the parking of these multiple commercial vehicles would no longer be the intended accessory to a residential use, which permits the parking of no more than one commercial vehicle less than 25 feet long. The fundamental nature of the use to which this applicant is illegally putting this property and will continue to put the property if the relief is granted, is commercial and constitutes a Contractor's Storage Yard under the Code. The Board is not authorized to effectively grant permission to this applicant on an area variance application to use the property for commercial purposes which is what granting permission to park three commercial vehicles would basically accomplish.

Additionally, § 215-9(I) of the Town Zoning Code prohibits the Board from granting the relief sought under these circumstances. That section provides as follows:

No building permit shall be issued, nor a Planning Board or Zoning Board of Appeals application acted upon in connection with properties upon which Zoning Code violations exist, unless such application seeks to abate such violations.

The relief sought herein will not abate all the current multiple violations given the blatant and clear continued commercial use of the property, its use as a contractor's storage yard, and the continued intended use as admitted by the applicant.

Further, since County Planning has disapproved the application on these grounds, the Board agrees with the County's analysis, and since there is no super-majority of the Board desirous of overriding that denial, the application is denied on these grounds as well pursuant to the GML.

Alternatively and independently, the Board has also reviewed this application under the area variance standards set forth in section 267-b.3 of the New York State Town Law, and finds that the benefit to the applicant if the variance is granted is outweighed by the detriment to the health, safety and welfare of the neighborhood or community by such a grant, and the Board has made the following findings and conclusions in that regard:

(1) The proposed variance would produce an undesirable change in the character of the neighborhood and a detriment to nearby properties. The fundamental character of the use to which the applicant is placing this property is at direct odds and is totally contrary to the nature, intent, and character of the RR zoning district. Allowing the parking of three commercial vehicles containing various contracting tools and equipment in this yard on the applicant's residential property for use in connection with the applicant's clear commercial

operation on the subject parcel in a low-density residential district is totally out of character with the community and will cause a detriment to nearby properties. It brings with it commercial contracting truck traffic moving in and out of the parcel, transfers of equipment in and out of the trucks and trailers, and all the other many things attendant to a contracting business that the creation of the RR district was meant to eliminate in and around rural low-density residential zones. That a few nearby neighbors, some of whom have directly benefitted from the applicant paving and maintaining the narrow private access road, do not object is noted but on balance, in its discretion, the Board finds it to be unpersuasive regarding this factor.

(2) The applicant presented no proof in the record that there are no feasible means to achieve the benefit sought without a variance. To the contrary, the applicant has admitted that the intent in applying for the variance was to save money in his contracting business by asking for the ability to use this residential lot to park three or four commercial vehicles here instead of elsewhere. He did not deny that there were other places he could park them; he would not state where any of the equipment had been moved during the pendency of the application and would not respond definitively when asked if they could be kept wherever they are permanently.

(3) The variance sought is very substantial. The applicant is seeking approval for three times the permitted maximum (three commercial vehicles instead of the permitted one).

(4) There would be an adverse effect or impact on the physical or environmental conditions in the neighborhood or district were the variance granted. Parking various commercial contracting vehicles on this residential lot and filling them with various pieces of equipment including some gasoline powered contracting equipment and other gear and materials for use in the contracting business, certainly may negatively impact the environment, given the potential for spills or overflows of gasoline and oil for those vehicles and machinery. Additionally, as shows in the photos, the fill apparently brought in to create this elevated contracting yard has created or made worse the existing steep slopes on the property and has already begun to erode. Although the applicant expressed a general willingness to address that erosion, he did not provide any proposal during the hearing, other than perhaps to add some landscape for visual screening purposes, unrelated to the erosion issue. Further, the flow of truck and other traffic in and out of the lot in this low-density residential district constitutes an adverse impact on the physical conditions as well.

(5) The alleged difficulty was totally self-created. The applicant certainly knew or should have known that under the Code both the use to which the applicant has been putting the property, including the parking of multiple commercial vehicles, and the changes made to the property to facilitate it, are plainly contrary to Code. The applicant went about this commercial transformation of this residential lot in stealth without any applications or approvals. The applicant only came to the Board after he was caught by the Building Department. Additionally, even during the pendency of the application when the applicant knew the Board members may be present and/or observing the property, the applicant continued to blatantly use the property in illegal ways, and even found new ways to use the property in violation of law.

NOW, THEREFORE, BE IT RESOLVED, that the application for a variance is hereby DENIED.

Upon roll call, a vote to pass the foregoing resolution was as follows:

AYES: Mr. Keegan, Mr. Anginoli, Mr. Lynch, Mr. Streiter, Ms. Davis, Mr. Gazzola, Chairman Wright

There being 7 votes in favor of the motion, 0 votes against the motion, and 0 abstentions thereto, the Chairman declared the motion carried and the resolution adopted. The Clerk was directed to file a copy of this decision in the Office of the Town Clerk of the Town of Stony Point and to notify the applicant accordingly.

Chairman Wright begins the discussion for the request of Salvatore Fiola-8 Brooks Dr-App. #22-06 (Area Variance)

GARAGE:

Chapter 215, Article V Bulk Requirements, Section 215-15 A Bulk Table part II (215 attachment 16),

Column 5 Required Side Setback/ Side Setback Total.

Minimum side setback required = 15'

Side setback provided = 5.9'

Variance necessary = 9.1'

Total combined side setback required = 40'

Combined side setback provided = 19.1'

Variance necessary = 20.9'

Section: 20.06

Block: 2

Lot: 13

Zone: R1

*****MOTION: Mr. Anginoli made a motion to maintain the public hearing; seconded by Ms. Davis. All in favor; the motion was carried.**

Light discussion about the impacts this application could have on the environment and the surrounding neighborhood. No further information was provided due to the closure of the public hearing at the last meeting.

Chairman Wright makes a motion to adjourn the meeting of June 16, 2022.

*****MOTION: Mr. Anginoli made a motion to adjourn the meeting of June 16, 2022; seconded by Ms. Davis. All in favor; the motion was carried.**

Respectfully submitted,

Nicole Pechin

Secretary
Zoning Board of Appeals