

**TOWN OF STONY POINT
ZONING BOARD OF APPEALS
Minutes of January 7, 2016**

PRESENT:

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

ALSO PRESENT:

Bill Sheehan, Building Inspector
Brian Nugent, 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. So I would like to welcome back Kathy Kivlehan. She is rejoining us again so I welcome her back.

I see by the agenda the first item is a request of Brad Stern for Homestead Hardware.

Request of Brad Stern for Homestead Hardware – Application 2015-0007

A variance from the requirements of Chapter 215, Article VIII, Section 39 E, to permit rental truck, one maximum 20 foot rental van with less than required parking spaces; Required 14 spaces Provided 7 spaces at 73 South Liberty Drive, Stony Point, N.Y.

Section 20.11 Block 2 Lots 21 Zone BU

Chairman Wright: I would like to make a motion to put this on the agenda for next meeting. Before we do that, I was just wondering if we have any questions for the applicants. If you got a chance to go through the packets - to see if you have any questions? I want to make sure that we don't have the hearing tonight; just ask for additional information.

Is there anyone here from Homestead Hardware?

Unidentified Male: Yes.

Chairman Wright: Please come forward and identify yourself.

Unidentified Male:

Brad Stern – Homestead Hardware
73 South Liberty Drive
Stony Point, New York

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

Mr. Stern: Yes.

Mr. Casscles: I have two (2) questions. According to the application here it says the maximum one (1) 20 foot and that is a van?

Mr. Stern: Right, 20 foot or less it should say.

Mr. Casscles: Is that an actual van or is that a box truck that is over in the commuter lot?

Mr. Stern: It could be as long as it measure 20 foot or less is what the Town said it would be the best for it.

Mr. Casscles: Because Peterson had a (inaudible) and a box truck for a while there didn't they?

Mr. Stern: Well on the premise – yes. We do have parking available (inaudible).

Mr. Casscles: So the one in the commuter lot will be the one that goes in front of the store.

Mr. Stern: Yes.

Mr. Casscles: Okay.

Mr. Keegan: I have a question – The parking of the van in the front of the store; is that more of an advertising concept?

Mr. Stern: Yes, that is exactly what it is. We are trying to utilize – plus it would be for a location stop also. It would go out on rentals; it would not be there 24 hours/7 days a week if the van is rented that would be the first one to go out is to get that out on the street because that is how we make our money.

Mr. Keegan: Okay, so it's primarily an advertising thing. You do have room in the back of the building...

Mr. Stern: It's two-fold – one its advertising and one for a rental. But, yes it is an "eye-catcher". If somebody comes by and sees what it looks like, and doesn't know we rent trucks it's a visual aide for a rental.

Mr. Casscles: A few things – it was also at the ambulance corps building; wasn't it?

Mr. Stern: No. It was actually next to the ambulance corps building. We were told to take them off premise so...well we couldn't just call U-Haul and say take your trucks out right this second so we try to find an avenue where it wouldn't be on premise to try and comply.

Chairman Wright: So I just want to make sure we have enough information for a Public Hearing next week so if you have questions about...we have enough information to hold the Public Hearing then we can go forward.

Mr. Porath: I just want to know how many total trucks you plan to have.

Mr. Stern: Three (3) is our primary goal - two (2) parked in the back of our business and one (1) in the front.

*****MOTION:** Mr. Casscles made a motion to place Application #2015-0007 on the January 21, 2016 agenda for a Public Hearing; seconded by Mr. Porath. Hearing all in favor; the motion was carried.

Chairman Wright: It will be on the next meeting which will be January 21, 2016. The Sunday prior to that, which is January 17, 2016, we will have our site visit at 8:00 AM.

Do we want Mr. Stern to be there?

Mr. Casscles: Can you park the van there Sunday morning so we can see it there?

Mr. Sheehan: It is parked there now; so yes.

Mr. Stern: I will make sure it is there.

Chairman Wright: Before we go to our next agenda item, we are going into Executive Session.

*****MOTION:** Chairman Wright made a motion at 7:06 PM, to go into Executive Session, to confer with counsel for legal advice; seconded by Mr. Fox. Hearing all in favor; the motion was carried.

*****MOTION:** Mr. Casscles made a motion at 7:24 PM, to reconvene to regular Zoning Board of Appeals meeting; seconded by Mr. Porath. Hearing all in favor; the motion was carried.

*****MOTION:** Mr. Porath offered the following resolution; seconded by Mr. Anginoli.

In the Matter of Application #13-13 of Kevin Maher, an appeal of the Building Inspector's October 18, 2013 letter concerning Violation No. 1189 to Erich and Kimberly VonHein.

WHEREAS, the application was previously heard before this board on 12/5/13, 12/19/13; 1/16/14, and 2/6/14 and a decision rendered on February 6, 2014; and

WHEREAS, on July 29, 2015, the Building Inspector, William Sheehan, issued a letter to Erich and Kimberly Von Hein ("Von Heins") rescinding the October 8, 2013 letter that was the subject of Petitioner's appeal in addition to rescinding a December 2, 2013 determination issued to the Von Heins; and

NOW, the Zoning Board of Appeals makes the following FINDINGS OF FACT and CONCLUSIONS OF LAW:

FINDINGS OF FACT

1. Building Inspector William Sheehan issued a July 29, 2015 letter to the Von Heins rescinding his October 18, 2013 determination that was the subject of Petitioner's appeal to this Board.

CONCLUSIONS OF LAW

1. A Zoning Board of Appeals ("ZBA") does not have jurisdiction to issue advisory opinions and issuing advisory opinions is outside the scope of the ZBA's appellate powers. See Gaylord Disposal Serv., Inc. v. Zoning Bd. of Appeals of Town of Kinderhook, 175 A.D.2d 543 (3d Dept. 1991)
2. In the absence of an administrative determination to review, the Zoning Board of Appeals is without power, since its jurisdiction in that regard is appellate only and it may not render an advisory opinion. See Brenner v. Sniado, 156 A.D.2d 559 (2d Dept. 1989)
3. The jurisdiction of the board of appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination made by the administrative official charged with the enforcement of any ordinance or local law adopted pursuant to this article. See Town law § 267-a(4).
4. The Building Inspector's July 29, 2015 determination rescinding his October 18, 2013 letter to the Von Heins renders the ZBA without jurisdiction to consider the merits of the application, which sought review of that same now-rescinded October 18, 2013 determination. Any review by this Board of the rescinded determination would be advisory only and is therefore prohibited by law.

NOW, THEREFORE, BE IT RESOLVED, that the Zoning Board of Appeals lacks jurisdiction to further consider Appeal No. 13-13 of Kevin Maher.

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

Chairman Wright: That concludes our business from our agenda.

*****MOTION:** Mr. Fox made a motion to adjourn the meeting of January 7, 2016; seconded by Mr. Casscles. Hearing all in favor; the motion was carried.

Respectfully submitted,

Kathleen Kivlehan