

**TOWN OF STONY POINT
ZONING BOARD OF APPEALS
Minutes of July 21, 2016**

PRESENT:

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

ALSO PRESENT:

Dave MacCartney, Attorney

Chairman Wright

Chairman Wright: Good evening, welcome to the Stony Point Zoning Board of Appeals. I call this meeting of July 21, 2016, to order. Please rise for the Pledge of Allegiance.

So we have three (3) items on the agenda tonight. The first item is a decision for the request of Friedel Shtop.

Request of Friedel Shtop

A variance from the requirements of Chapter 215, Article V, Section 15A d.2-5 – Less Than Required Side Setback (required 25’; provided 12.4’) and Chapter 215, Article V, Section 15A d.2-5 – Less than Required Total Side Setback (required 75’; provided 61.8’) at 11 Hidden Hills Drive, Stony Point, New York

Section: 19.02 Block: 2 Lot: 46 Zone: RR

*****MOTION: Mr. Lynch offered the following resolution; seconded by Mr. Vasti.**

In the Matter of Application #16-02 of Friedel Shtop for variances from the requirements of Chapter 215, Article V, Sections 15A d.2-5 of the Stony Point Zoning Code to permit the construction, maintenance and use of an addition to a single family home with less than required side setback, providing 12.4 feet, whereas 25 feet are required and less than required total side setback, providing 61.8 feet whereas 75 feet are required, on premises located at 11 Hidden Hill Drive, Town of Stony Point, designated on the Tax Map as Section 19.02, Block 2, Lot 46 in the RR Zoning District.

The applicant was represented John Perkins, Architect, and the following documents were placed into the record and duly considered:

Application; Building Inspector's denial letter dated 6/9/16; Survey last revised 5/17/16 and Plans last revised 6/13/16.

Additionally, members of the Zoning Board of Appeals personally visited the applicant's property and viewed it and the neighboring properties on or about July 3, 2016.

WHEREAS, the proposed action is a Type II action under the regulations promulgated pursuant to the New York State Environmental Quality Review Act; and

WHEREAS, a public hearing was held on July 7, 2016, and the testimony of the following persons was duly considered: John Perkins; Daniel Fox.

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

Friedel Shtop is the owner of the subject parcel which is improved with a single family home. The applicant proposes an extension to an existing garage on the south side of the dwelling. Presently, there is a single story one-car garage with approximately an 8 foot height. The applicant proposes to extend the garage 15 feet further so that it accommodates two vehicles within the interior and raises the height so that it can be used for purposes of mechanical repair of boats and other oversized items.

There is an existing shed and the new addition would come to within approximately 3 feet of that shed. The Code requires at least 15 foot separation between the structures and the applicant has agreed at the public hearing to demolish or move that shed to a Code-compliant location on the property as a condition of any grant of the variances sought.

No objections have been received to the request from the adjacent property owners; to the contrary one neighbor appeared and spoke in favor of the application.

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 variance is 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.

(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 to this Board that the benefits sought could be achieved through any other means.

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

The variances sought are substantial.

(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.

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

The alleged difficulty was self-created insofar as the applicant seeks to voluntarily add an addition.

NOW, THEREFORE, BE IT RESOLVED, that the application for variances as set forth above is hereby approved on the condition that the existing shed shall be demolished or moved to a Code-compliant location on the property prior to construction and that the applicant shall comply with all other applicable laws, rules, codes, and regulations, and the matter is remanded to the Building Inspector for further consideration in compliance with the terms and conditions hereof.

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

Chairman Wright: The second item on the agenda is a new application for the request of David T. and Sandi Schassler.

Request of David T. and Sandi Schassler – Application #16-03

A variance from the requirements of Chapter 215, Article V, Section 15A-h.2-2 - Less than required lot area, required 25,000 square feet provided, 22,952 square feet and Chapter 215, Article V, Section 15A-h.2 – Less than required front yard/setback; required 35 feet, provided 13.7 feet, located at 8 Schassler Place, Stony Point, New York.

Section: 20.07 Block: 2 Lot: 68.1 Zone: RR

What we are looking to do here is, just to see that we have enough information and then I will take a motion to put it on the agenda which will be September 1, 2016.

Is the representative for the applicant present? Please identify yourself.

Dwight Joyce – Attorney

Chairman Wright: I will ask – again this is really just to see if we have enough information so when we have the Public Hearing then we will have sufficient documentation to render a decision. So I will open it up to the Board if we have any questions for Mr. Joyce.

Mr. Casscles: Mr. Joyce, we have a site visit scheduled for August 7, 2016...

Mr. Joyce: Yes, as I indicated when I walked in the map you have was just updated with some minor changes the County recommended.

Mr. Casscles: Can we get that?

Mr. Joyce: Sure.

(handing out revised map to the Board)

Mr. Casscles: On August 7 you will mark out where the house is going to be – staked out?

Mr. Joyce: The house is there.

Mr. Casscles: The house is there.

Mr. Joyce: It's been there (inaudible away from microphone)It's not compliant with the laws. The road, Schassler Place, which is off of Washburns Lane is too close to the house.

Mr. Casscles: So it is existing then?

Mr. Joyce: Yes, it is an existing home.

Mr. Casscles: And you are not doing any modifications at all?

Mr. Joyce: No, no exterior modifications; no interior modifications. Whatever is there is there. We just need to get the house (inaudible) and according to the Building Department it's actually is a two-family permitted in that zone and it just doesn't have the proper setback from the street and one (1) of the side yards is a little short.

Mr. Casscles: Okay. So you are going to have the notifications on the street – so we know which lot we are dealing with on that street cause there is a couple of them there.

Mr. Joyce: I know where the house is cause I've been in it many times. I will be there in the morning on Sunday the 7th.

Chairman Wright: Any other questions from the Board, before I take a motion to entertain a motion to put it on the agenda?

Mr. Vasti: Mr. Joyce, can you talk about what you want to do there?

Mr. Joyce: We actually don't want to do anything. The house is existing. The Schassler place is existing. It's there. It originally, I think somewhere back in the turn of the last century; not ours, but the one before us it was a barn that at some point became converted to a two-family house. Before David Schassler owned it, I believe his great grandmother owned it and she resided there.

Mr. Vasti: Is the house now vacant now sir?

Mr. Joyce: No, it is occupied.

Mr. Vasti: So what relief are you seeking from the Board; what are you trying to achieve?

Mr. Joyce: We are trying to make it compliant with the Code. The current Code, which I think came in the 1962, long after the house was...the barn which is now a house was actually built. It just doesn't fit our Code. So when he went to the Planning Board to make it legal for the house and the setbacks, they were told, the Planning Board said you had to come here. So that is how we got our referral. There is no Building Permit. They are not looking to increase the size, they are not looking to interior modifications - nothing. What you see on August 7th is what was there and what will continue to be there.

Mr. Porath: So the purpose is just to get a legal C.O.?

Mr. Joyce: Right, so we can be legal in our zone. It is presently occupied by actually, I believe its David T. Schassler's in-laws.

Mr. MacCartney: What's the problem that brought you to the Board originally if it all pre-existed the Code and the Code was put into place isn't it pre-existing non-conforming – I'm missing something.

Mr. Joyce: It is pre-existing non-conforming, but it didn't have a two-family certificate of occupancy so we are looking to...

Mr. MacCartney: Oh for the two-family C.O.?

Mr. Joyce: Right.

Mr. MacCartney: Cause its changing use – from a one-family to a two-family so you have to be co-compliant.

Mr. Joyce: Well it's been two-family...

Mr. MacCartney: But, the C.O. is for...

Mr. Joyce: I don't even think there is a C.O. for the house, but on the records of the Building Department it doesn't have it so when David T. Schassler, as opposed to the father, which is David J. Schassler, went to the Building Department to make it complaint he said you have to go to the Planning and then Zoning and that's how Mr. Zigler got involved and I did. Actually I asked a lot of the older Schasslers that passed away, the ones that were there when the building was built, so I don't think anything is around, so I asked David, Jr., that's what I call him, to get me pictures just so I could show that everything that's there, it maybe resided, but it was the same thing it was a barn back in 1901 or whenever it was built.

Mr. Vasti: Mr. Joyce, your application on page 2, item #8 is checked off as an area variance, but from your narrative and your explanation given to us this evening this sounds more like a use variance.

Mr. Joyce: It's not. I checked with the Town before I came. The Building Department made it very clear to me that in the R1 District it is only an area variance needed; actually two (2) area variances – one for the front yard and one (1) for the side yard and that's all that's required. It is compliant with the zoning of the Code except for the lot line placements.

Mr. Vasti: You indicated that there are two (2) families living in the barn.

Mr. Joyce: Well two families have lived in – I don't know presently there are two in there; but in the past two have lived in that house. As a matter of fact, I can tell you from personal knowledge that David J. Schassler, David T's father lived upstairs and his grandmother lived downstairs.

Mr. Vasti: But, it is family?

Mr. Joyce: It's always been family.

Mr. Vasti: The same family?

Mr. Joyce: Yes. I just want to say that David J. Schassler does not live upstairs anymore he lives in Tomkins Cove.

Mr. Casscles: What was the reason for the new map?

Mr. Joyce: I saw the County had some comments regarding some legends – I think he called it a "site plan", but it is really a "plot plan" and he had some things in the signature box. The County issued a letter, which I received and Mr. Zigler sent it over and he said he made new maps. So if he made new maps and I'm going to pick up new maps and let me see if I have the County's letter here I can give you a copy. Here it is.

(gave letter to Mr. Casscles)

Mr. MacCartney: I'm looking through the application...usually there is a determination made by some Building or Zoning official with their opinion from. I don't see a determination...

Mr. Joyce: It came from the Planning Board.

Mr. MacCartney: So what was the application to the Planning Board?

Mr. Joyce: The application to the Planning Board – I will provide you with a copy.

(gave Mr. MacCartney a copy of the application)

Mr. MacCartney: I see the referral letter...so it was an application for a conditional use permit...

Mr. Joyce: To make it compliant in the area.

Mr. MacCartney: So I understand, I am sorry cause I haven't seen an application like this here in many years; I've been here since 2006 so I'm trying to get my handle on how did it come to this Board...to make sure that the Board is jurisdiction, that's what I'm always concerned about. It's a two-family use is permitted in that district as of right, or it's permitted only with a conditional use permit.

Mr. Joyce: I believe it's only the conditional use permit. When I spoke to Mr. Sheehan about it earlier in the week or the end of last week, whenever it was, I had specifically asked him is there a Zoning variance for a use that needs to be required. He said absolutely not. You just need the two (2) area variances. He said it is a two-family house which doesn't have to get the required approval so that's what David T. went to do with Mr. Zigler. I didn't mean to cause confusion.

Mr. MacCartney: It's just unusual so I'm trying to understand it before we get into the Public Hearing.

Mr. Casscles: Even the County is listing it as a conditional use permit.

Mr. Vasti: Mr. Joyce, would you happen to know when the property received a conditional use permit and what were the conditions in that permit.

Mr. Joyce: I don't believe it's received one yet, that's why he is going to the Planning Board now that referred this over to you. So after we are done with you, Mr. Zigler will go back to that Board in order to satisfy whatever the conditions they may have.

Mr. MacCartney: So in other words I gather from what I am looking at and hearing that there was an application that was required for a conditional use permit to get approval to get a C.O. for a two-family and before the Planning Board can issue the conditional use permit it felt that it cannot do so in the absence of variances because the property is not otherwise code compliant with the regard to setbacks and whatever else is in the application. So it's here for consideration and then to send back to the Planning Board.

Mr. Porath: So it's not the concern of this Board as far as whether it is a two-story...if he's getting a C.O. for a two-family or not it's simply the variance setbacks.

Mr. MacCartney: I think it's part of what the Board needs to be considering. It's not from what...and I have to go back and look at the Code and the sections on the conditional use permit and the standards, but I'm surmising that that section of the Code provides that the Planning Board has to apply certain criteria in deciding whether to approve the use. Not this Board, I don't think this Board is being asked to issue or not issue a review it for a conditional use permit, it's just for the variances, but the variances aren't in a vacuum, the variances are in the context of well it's going to be used as a two-family for whatever that may be worth. If it's relevant, it may be or it may not be, but it's in context.

Chairman Wright: Because what is written on the agenda here is really the Code Chapter 215...so my assumption is that really that's the scope of how our inquiry is within those two (2) sections. Right...if they don't mention two-family or anything else it really shouldn't have an impact on our review.

Mr. Anginoli: Is it even required that we review it.

Mr. MacCartney: All I'm saying is that every application, no matter what it is, has to be viewed in context of what it is. The intensity of the use or lack thereof, it's not for this Board to determine whether a two-family use is to be permitted or not. That's with, if I'm understanding without looking at the Code, that's for the purview of the Planning Board in its consideration of whether to issue the conditional use permit, but this Board should take into consideration what is the proposed use. If the proposed use is for a kindergarten facility that's going to be different then if was for a single family home and it may be different from a two-family home, etc. It is just something that the Board needs to take into consideration and then apply all the factors it usually does to the area variances specifically requested.

Mr. Vasti: Since the Planning Board referred this applicant to the Zoning Board, would I be correct to assume they are the lead agency on this and ultimately they will have the final decision?

Mr. MacCartney: I am unaware of whether they made any determinations whether...I would have to take a look. Typically area variance applications in regard to this Board are Type II actions – residential structures.

Mr. Vasti: It's a Type II so there is no S.E.Q.R.A., but it is still unclear to me and maybe as this application moves forward, of what the applicant is seeking to achieve by having us look at two (2) variances being sought on a piece of property that is pre-existing non-conforming if they are not going to do any enlargement or modification of the structure. I just don't understand the benefit being sought...

Mr. Anginoli: That is exactly what I'm thinking. It doesn't seem like there is an issue for us.

Mr. Porath: Maybe if I describe my understanding of it it may answer your questions cause I understand...they had an existing approved use as a single family. They are seeking a change in its use as a two-family – that triggered, maybe that is not the right work, but it triggered a necessity for you to make some administrative changes of things to make sure it was in compliance...was it setback enough, there's not enough square footage, so this is just to tie up the loose ends for the change of use from a single-family to a two-family.

Mr. Joyce: Right. The person who owns the house, David Schassler that owns the house, is regulated through the F.C.C. He is very worried about making sure that it is properly done. He is on top of everything. He doesn't like loose paperwork so he...that's what started this process going. He was very nervous about it. He goes I don't have the C.O. for a two-family and that's what started the ball rolling and that is why he saw Mr. Zigler about it and...

Mr. Vasti: Mr. MacCartney, I would like to make a suggestion that next time we meet for this application, that we have a representative from the Building Department here to maybe clarify in more detail and answer some of the questions more fully about the application.

Mr. MacCartney: I agree and we could ask the Clerk to invite Mr. Sheehan or another representative to be present.

Mr. Vasti: Mr. Joyce, did Mr. Sheehan personally come out to the property or one of his Inspectors?

Mr. Joyce: I don't know if anybody did. I met Mr. Sheehan at his office when I went over the application before I submitted it to make sure there wasn't an issue regarding a use variance. So I don't know if he actually ever visited the site at this time. He may of visited it in the past; I have no idea.

Mr. Vasti: Thank you very much.

Mr. MacCartney: I also would ask, I didn't look at the application, but in looking at the vicinity map on this it is striking a recollection of mine that way back in '06, '07 or '08 this Board actually considered variances for a couple of different properties on Schassler Place, area variances including in particular I think this one. I recall that flag lot that is next door...does anybody else recall this?

Mr. Casscles: The one that was flooding onto...

Mr. MacCartney: Yes, there was a flooding back there. I can see that...what we really should do...if the Clerk can make sure the Board has available to it whatever decisions or data on that, if I'm right. I may not be right, but it is something that the Board should consider in context and what relief did it grant before on that property. My recollection could be failing me, but I'm thinking that it was a subdivision of this lot and the other lot. I could be wrong. I think it is something that the Board should at least have in terms of context for this.

Mr. Vasti: Mr. Joyce, is Schassler Place private road or is it a Town road or a County road?

Mr. Joyce: My understanding is it's always been a private road. I don't think the Town ever took it over. I don't think it's wide enough for a public road.

Mr. Vasti: Are there any variances, not variances I rethink that...are there any known easements on the property or on Schassler Place.

Mr. Joyce: Schassler Place itself is an easement on this property so the road of Schassler Place is partially on this property; which partially creates the problem.

Mr. Vasti: Mr. MacCartney, since this a private road and the applicant is seeking two (2) variances, what confounds it more is that had it been on a County road or a Town road it's possible that a 280A would also be necessary for improved access onto the road.

Mr. MacCartney: That's one of the reasons, exactly that issue that...you read my mind that I would like to see some of those other prior applications. It might be that there was a 280A already granted on this. Again that's...it's at least eight (8) years ago, if not 10 that there was...I can think of at least three (3) different applications at this point considered on Schassler Place around that time period. One (1) was definitely in regard to that flag lot next door. I think one (1) was in regard to the lot next to that that backed up on that other street, Denise Court, and that one (1) was, I think, across the street from that.

(pointing at map with Mr. Joyce)

So I think it was this here and I think it was this here and then I think one (1) of these lots there was something that was considered as well.

(Mr. Joyce speaking, but away from microphone – so inaudible)

Okay so even more reason to get them all...it will be reviewed and take a look through them as well and that way your presentation at the hearing could be well informed as to the history of the lots in the area and the Board can consider it as a whole.

Chairman Wright: Any other questions from the Board?

(no response)

*****MOTION:** Mr. Porath made a motion to place Application #16-03 on the September 1, 2016, agenda for a Public Hearing; seconded by Mr. Casscles. Hearing all in favor; the motion was carried.

*****MOTION:** Chairman Wright made a motion to accept the minutes of July 7, 2016; seconded by Mr. Vasti. Hearing all in favor; the motion was carried.

*****MOTION:** Mr. Casscles made a motion at 7:25 PM to go into Executive Session, pending litigation; seconded by Mr. Anginoli. Hearing all in favor; the motion was carried.

*****MOTION:** Mr. Vasti made a motion at 7:33 PM to reconvene to regular Zoning Board of Appeals meeting; seconded by Mr. Anginoli. Hearing all in favor; the motion was carried.

*****MOTION:** Mr. Vasti made a motion to adjourn the meeting of July 21, 201; seconded by Mr. Casscles. Hearing all in favor; the motion was carried.

Respectfully submitted

Kathleen Kivlehan
Secretary
Zoning Board of Appeals