

**TOWN OF STONY POINT
ZONING BOARD OF APPEALS
Minutes of September 15, 2016**

PRESENT:

Mr. Anginoli (absent)
Mr. Keegan
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 September 15, 2016, to order. Please rise for the Pledge of Allegiance.

So we have one (1) item on the agenda, but before we get to that I just want to welcome Mr. Keegan back. He has been out for a little while so we would like to welcome you back. I hope things are going well.

Mr. Keegan: Thank you, Mr. Chairman.

Chairman Wright: With that we have one (1) item on the agenda. I take everybody had a chance to review that; so unless there are any questions about it I will ask Mr. Casscles to offer a motion.

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

In the Matter of Application #16-03 of David T. and Sandi Schassler, for 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, on premises located at 8 Schassler Place, Stony Point, New York, designated on the Tax Map as Section 20.07, Block 2, Lot 68.1 in the R-1 Zoning District.

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

Application; Survey dated June 14, 2016; June 6, 2016 application to Town of Stony Point Planning Board; August 16, 2016 correspondence from Rockland County Department of Planning; draft minutes from June 23, 2016 Town of Stony Point Planning Board meeting; Zoning Board of Appeals decision on Application No. 95–5 dated May 26, 1995; Zoning Board of Appeals minutes of May 18, 1995 meeting; August 29, 2016 letter from Rockland County Highway Department; Zoning Board of Appeals decisions in Application Nos. 92–36, 95–21, 05–40.

Additionally, members of the Zoning Board of Appeals personally visited the applicant's property and viewed it and the neighboring properties on or about August 7, 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 September 1, 2016, and the testimony of the following persons was duly considered: Dwight Joyce, Esq.; David Zigler; Denise Schassler-Owens; Alex Ereifej; David Ereifej; William Nytko; and William Sheehan.

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

This property has a long and unique history. It is undisputed that there has been an existing structure on the subject lot in the same location for decades at the very least (the applicant's attorney represented that he thought it dated back to 1901 or thereabouts). It was originally a single family structure with a large garage downstairs and living space upstairs. The garage was originally used by predecessors in the Schassler family to house Town DPW trucks before the Town had its own garage. The applicant's father, also named David Schassler, acquired the property in approximately the mid-1990s and renovated the existing structure, converting the garage area into another separate living space and making it into a two-family home. The structure has apparently been used as a two-family home since that time (over 20 years).

The lot is located in an R-1 zone, which permits a single family use as of right, but also permits a two-family use by way of a conditional use permit issued by the Planning Board. No conditional use permit had previously been sought or granted, notwithstanding its use as a two-family since the mid-1990s. The applicant is now seeking a conditional use permit to legalize it as a permitted two family dwelling. The applicant has no plans to expand the structure or for any new construction or changes to the structure or to any existing lot lines or the lot area.

Accordingly, the applicant properly applied to the Planning Board for such a conditional use permit. It then became apparent that the existing structure on the lot does not fully comply with the bulk requirements of the Code for a two family dwelling. In regard to lot area, 25,000 square feet is required but the lot provides 22,952 square feet. In regard to the front yard/setback, 35 feet are required, but 13.7 feet are provided.

The Planning Board, therefore, referred the applicant to this Board for consideration of those two area variances, as would be necessary before that Board can proceed further to consider the conditional use permit. Of note is the fact that the applicant is not before this Board for a use variance nor is one required. The only application is for an area variance to legalize the pre-existing front set back and lot area conditions in order to permit the Planning Board to consider the conditional use permit for a two family dwelling. Also of note is the fact that this Board does not have jurisdiction over the application for a conditional use permit, which is in the sole purview of the Planning Board.

In reviewing this application for the two bulk variances requested, this Board is mindful of its decision on Application No. 95-5 which relates to this exact property. In that decision dated May 1995, this Board granted two variances to permit a two lot subdivision; one for access for the two new lots under Town Law §280-a, and the other for lot width. That application permitted the two adjacent flag lots which presently exist, one of which (Lot 68.1) is the lot involved in this application currently before the Board. No other variances were requested or applied for at that time.

It is unclear whether the applicant's father converted the existing structure on the lot to a two-family use before or after the 1995 subdivision of the property and corresponding May 1995 decision by this Board. However, it is clear that the application submitted to this Board at that time disclosed the property only as a single family use, not a two family. Had the application been for a two-family use at that time, the same variances sought herein would have been required back then as a pre-requisite to the subdivision. Either the property had already been converted to a two-family use and that was not disclosed to this Board in 1995, or it was still a single family home and was converted sometime shortly thereafter. It is unclear whether that application would have been granted at that time had the use been disclosed as an existing or proposed two-family.

Schassler Place is a private roadway that is far more in the nature of a driveway than an actual roadway. It services approximately 15 different properties already, is quite narrow, and is only approximately 750 feet long. From the Board's own observations and the testimony at the public hearing in this matter, it is clear that the roadway/driveway is already overburdened right now. The Board is very concerned about any further expansion on any properties on that roadway, including this one, as well as any further activities of any kind that would increase vehicular and/or pedestrian traffic in any way on that driveway/roadway. The Board is concerned about any increase in intensity of use on the road/driveway, particularly insofar as the public health, safety, and welfare are concerned, including those living and visiting there as well as emergency first responders who may be called upon to respond to one or more of the properties on Schassler Place.

The Board is further aware that it does not have jurisdiction to grant or deny the conditional use permit, and is not being asked to do so in the current application. Rather, to the contrary, this Board's jurisdiction is narrow in scope, and is limited purely to the two bulk variances requested. However, the Board must consider these variance requests not in a vacuum, but in connection with the conditional use permit, since if no change in use to a two-family were sought, there would be no need for the variances requested herein at all.

In regard to the narrow issues before the Board, the Board must also note the undisputed testimony that the property has had the same lot area since the subdivision in 1995 and the subject structure has been in the same location (13.7 feet from the front property line) for likely over a century. It is important to note that no construction or expansion is proposed or planned. So, nothing in regard to this application changes the physical characteristics of the property in any way.

The Board is also cognizant of the undisputed fact that the property has been in use as a two-family dwelling for a minimum of two decades (albeit illegally) without major incident. However, it cannot be ignored that the property has been occupied primarily as a Schassler family abode, either in whole or in part, for decades, including the entire time it has been used as a two-family dwelling. It currently houses the applicant's in-laws and its use is, therefore, on the low end of the spectrum of intensity. The Board is aware that this may not always be the case in the future, as others occupying a two-family structure in that location in the future may well have significantly more family members or other occupants than those presently occupying the premises.

Accordingly, given the Board's concern in regard to the health, safety and welfare of the community as set forth in detail above, the Board is quite concerned that a grant of the variances sought herein, in conjunction with a subsequent approval of the requested conditional use permit by the Planning Board (should that Board see fit to grant it) could well have the consequence of significantly adding to the burden on an already over-burdened Schassler Place, particularly if not closely controlled with specific conditions.

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 variance is granted outweighs any detriment to the health, safety and welfare of the neighborhood or community by such a grant, but only on the conditions set forth herein, and has made the following findings and conclusions in that regard:

- (1) The proposed variances have the potential to produce undesirable changes in the character of the neighborhood and/or a detriment to any nearby properties, but with the imposition of the conditions set forth below, that potential can be mitigated to an acceptable level.
- (2) There is no evidence presented to this Board that the benefits sought of legalizing a two-family use could be achieved through any means other than the two bulk variances sought herein.
- (3) The variances sought are substantial.
- (4) There is no evidence before this Board of any adverse effect or impact on the physical or environmental conditions in the neighborhood or district other than those set forth above, which can be mitigated to some extent through the conditions set forth below.

(5) The alleged difficulty was self-created insofar as the applicant has used the property illegally as a two-family dwelling for upwards of two decades.

CONDITIONS

- (1) There shall be no movement or expansion of any kind (laterally, vertically, or otherwise) of the structure on the subject lot, and no new structures shall be permitted upon such lot;
- (2) There shall be no expansion of the numbers of bedrooms, bathrooms, or kitchens located in the subject structure;
- (3) The variances sought herein are conditionally granted only in the context of the current application and only if the Planning Board grants the conditional permit application; if the Planning Board does not grant the said conditional use permit application, the grant of the variances sought herein shall be deemed null and void;
- (4) This Board recommends that if the Planning Board is so inclined to grant the application for a conditional use permit, that the said Board should consider placing reasonable conditions and restrictions on any such permit, including but not limited to conditions in regard to the numbers of vehicles and occupants permitted, the nature and location of the parking spots to be provided for the subject structure, etc.

NOW, THEREFORE, BE IT RESOLVED, that the application for variances is hereby approved on the conditions set forth above and conditioned upon the applicant's compliance with all other applicable laws, rules, codes, and regulations, and the matter is remanded to the Planning Board for further consideration in compliance with the terms and conditions hereof.

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

Chairman Wright: Next item on the agenda is the minutes of September 1, 2016.

*****MOTION:** Mr. Casscles made a motion to accept the minutes of September 1, 2016, seconded by Mr. Porath. Hearing all in favor; the motion was carried.

*****MOTION:** Mr. Porath made a motion to adjourn the meeting of September 15, 2016, seconded by Mr. Keegan. Hearing all in favor; the motion was carried.

Respectfully submitted,

Kathleen Kivlehan
Secretary
Zoning Board of Appeals