

**Zoning Board of Appeals
Minutes June 21, 2012**

PRESENT:

Mr. Morlang
Mr. Keegan
Mr. Casscles
Mr. Vasti
Mr. Fox
Mr. Porath

ALSO PRESENT:

Dave MacCartney, Dep. Town 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.

Chairman Wright: We have one item on the agenda tonight. It is the decision – the request of Anne Kennedy.

Request of Anne Kennedy – App. #12-01

A variance from the requirements of the Town of Stony Point Zoning Code Chapter 215, Article V, Section 15A D.4-3 less than required lot width required 125 feet provided 105 feet; and Chapter 215, Article V, Section 17A less than required lot area required 25,000 square feet provided 20,366 square feet, located at 64 Crickettown Road, Stony Point, New York.

Section 15.03 Block 3 Lot 2 Zone RR

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

In the Matter of Application #12-02, of Anne Kennedy for a variance from the requirements of the Town of Stony Point Zoning Code Chapter 215, Article V, Section 15A D.4-3 to permit a subdivision creating a lot with less than required lot width, required 125 feet provided 105 feet; and Chapter 215, Article V, Section 17A less than required lot area, required 25,000 square feet provided 20,366 square feet, on property located at 64 Crickettown Road, Stony Point, New York, designated on the Tax Map as Section 15.03, Block 3, Lot 2.

The premises which are the subject of this application are located at or about the intersection of Crickettown Road and Heights Road in an RR Zoning District.

The applicant was represented by David Zigler and the following documents were placed into the record and duly considered:

Application; 1/20/12 Memorandum from Planning Board Chairman referring applicant to Zoning Board; Plans and Details, including those last revised 1/2/12 and 3/4/12 and all plans, documents, and drawings submitted to or received by the Board during the public hearings; 3/12/12 letter from David Zigler with attachments and plans; Affidavits of Posting and Mailing; 4/5/12 letter from David Zigler; Interest Statement, Affidavit of Ownership and GML Affidavit of John and Angela Culhane; 5/1/12 plans.

Additionally, members of the Zoning Board of Appeals personally visited the applicant's property and viewed it and the neighboring properties on or about February 26, 2012.

WHEREAS, this matter was referred to this Board for requested variances following the completion by the Planning Board of the SEQRA process, with the Planning Board having issued a Negative Declaration under SEQRA on December 8, 2011, and the request for area variances herein being itself a Type II action under the regulations promulgated pursuant to SEQRA; and

WHEREAS, a public hearing was held on March 1, March 15, April 5, April 19, and May 3, 2012 and the testimony of the following persons having been heard and considered: David Zigler; Michael Hekker, Stephen Lonergan; and Anthony Prestipino.

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 owner of the subject parcel which is located on the corner of Crickettown Road and Heights Road. The parcel owned by the named applicant, Anne Kennedy, is a "u-shaped" parcel, surrounding a parcel owned by John and Angela Culhane. The Culhanes did not originally sign the submitted application form, but during the public hearings on this matter, they submitted an affidavit of ownership and joined the application, since the applicant's request for relief to this Board necessarily included changes to the Culhane parcel.

In 2011, the applicant applied to the Town Planning Board for a subdivision of the Kennedy parcel, originally proposing to divide it into two lots, with one lot on the southerly side facing Heights Road and one lot on the northerly side facing Crickettown Road, with the Culhane lot in the center. That application then evolved at the Planning Board into a new proposed plan.

The new plan included the creation of a new lot north of the Culhanes, which was proposed to have no development whatsoever (it would either be deeded to the Town or otherwise burdened with a conservation easement or buffer). The Culhane lot would be expanded and squared off to the easternmost boundary of the Kennedy parcel. To the south of the Culhane lot would now be two new lots (instead of just the one proposed in the original Planning Board subdivision application) to be improved with one single family home on each of those two new lots. One driveway would be on Heights Road and one would be just around the corner on Crickettown Road.

The Planning Board reviewed this new plan then referred the applicant to this Board on the new plan for variances, because the proposed lot one of the new plan was substandard in regard to lot width and lot area. More particularly, proposed lot one (the southeasterly proposed new lot fronting on Heights Road) provides only 105 feet of lot width, whereas the Code requires 125 feet, and provides only 20,366 square feet of lot area, whereas the Code requires 25,000 square feet. Therefore, area variances would be required in order to proceed with the new plan. The applicant's representative was asked if the Planning Board provided a positive, negative, or neutral recommendation on the referral to this Board, to which he replied that "it was just a straight referral," and the referral from the Planning Board does not indicate any positive or negative recommendation.

The applicant's representative confirmed during the public hearings before this Board that there was essentially little difference to the applicant which plan went forward, as the applicant simply desired in the end to construct two new homes. The original subdivision application had one new home to the north of the Culhanes and one to the south, and the new application, presented to this Board, instead would place the two new homes both to the south of the Culhane lot.

The applicant's representative confirmed that the original subdivision as proposed to the Planning Board (one lot to the north and one to the south) was legal, feasible, and permissible "as of right." No variances would be required for that original plan to proceed. The applicant's representative indicated that the Planning Board had actually given "sketch approval" of the original plan before the plan evolved to the current one before this Board. The applicant's representative stated that, "If [the variance application] is not approved, we are going back to [the original plan for one lot to the north and one lot to the south]."

The northernmost lot in that original plan has some wetness toward the northern part of that lot. The applicant confirmed that there was no formally declared wetlands by the Army Corp of Engineers on that proposed northerly lot, but the applicant's expert says it would qualify. Notwithstanding that, the applicant confirmed that a house could certainly be built on that originally proposed northern lot, notwithstanding the "wetlands" area on that one portion of that lot. The applicant's representative stated in response to a comment that the Army Corp had not yet designated it wetlands: "I know, but we are saying it is wetlands. Let's make believe it is wetlands. Let's make believe everybody believes it is wetlands. You can still put a house on the rest of the lot."

When pressed to explain whether there was a claim that it would be impractical or infeasible to build a house on the northern lot because of the wetness or "wetlands," the applicant was quite clear that it was feasible and practical to build a house on that lot. He was asked, "So what you are saying is it wouldn't be practical to put a house there [?]" His response was "It is absolutely practical to put a house anywhere on that lot. Let's remove that from your question. Let's put the house back here..."

According to the applicant's representative, the new plan was presented by the applicant because it was thought it would be "a better plan" to create open space to the north particularly given the wetness in one area of that lot, and it would be easier to bring in the water and the sewer lines together the short distance to two new lots both on Heights Road, rather than run separate lines to the two separate lots (one to the north and one to the south). However, the applicant also asserted that there was no economic hardship in running those utilities separately per the original plans.

Neighbors, including one immediately adjacent to the proposed new lot one, appeared before this Board at the hearings and raised various concerns about the proposal. The concerns included safety in regard to traffic and having two driveways instead of just one added at the intersection of Heights and Crickettown, an already dangerous intersection. Board members also raised concerns about traffic safety issues they perceived from their own experiences and knowledge of the intersection in question and how adding two driveways at or about that intersection rather than just one would increase the hazard at that location. The applicant responded by talking about some sight line data and asserting his position that the original plan was "a little bit worse" than the current plan because the original plan gave more limited sight lines in one direction and would have a driveway across from Victor Drive (although no evidence was offered that there was not another feasible location for that driveway were the original plan to be followed).

Concerns were also raised that permitting a substandard lot would create a home so close to the neighbor's home that it would not be in keeping with the character of the neighborhood, and there would now be two homes forced in tight next to each other on the south side of the property and nothing to the north, which also is not in keeping with that neighborhood particularly when compared with the feasible alternative of having two new homes evenly spaced on either side of the Culhanes.

There was no evidence presented to the Board of any unnecessary hardship in proceeding with the original "as of right" plan as opposed to the plan for which variances were sought. There was no evidence presented that there would be any drainage problems created by building on the northernmost lot pursuant to the original plan.

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 is outweighed by the 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":

Yes. The nearby properties, including particularly the property directly to the east of the proposed lot number one, would be adversely affected by a grant of the area variance. Two homes would now be shoe-horned tightly next to those adjoining properties contrary to Code. Further, these two new lots, including the substandard lot, would be in close proximity to what is an already dangerous intersection from the Board's own experience and observations as discussed during the hearing. Two new driveways at that intersection instead of one would now be feeding traffic into that dangerous intersection. Further, the Board recognizes the applicant's argument that there are other lots in the

general vicinity of the subject parcel that are less than the required minimum of 25,000 square feet, but the applicant admitted that most of properties in that area are over 20,000 square feet. The Board finds that the significant increase in density in that spot, in that location on that particular corner, given the proximity of the directly adjacent neighbor and the difficult intersection existing there, and given the readily available alternative of having the homes evenly spaced with one to the north and one to the south, all combine in the Board's judgment and discretion to weigh against a grant of the variances sought.

(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":

Yes. There is no question, and the applicant has freely admitted, that there is absolutely no unnecessary hardship causing any actual need for this application. The applicant has been quite clear that there is a perfectly feasible alternative plan that achieves the same benefits the applicant seeks here. The applicant confirms that the alternate plan has already received sketch approval and is buildable as of right with no variances necessary, and that if the variances are denied, those alternate, original plans will be followed. The applicant further even asserts that there is not even any significant economic benefit to proceeding with the variance sought.

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

The variances sought are substantial. The lot width variance is 20 feet (16% less than the required minimum) and the lot area variance is 4,634 square feet (18.5% less than the required minimum). Particularly when these two variances are coupled together, and given the applicant's refusal to discuss mitigating measures such as screening between the proposed lot one and adjoining properties, these variances are certainly substantial.

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

Yes. As set forth above, the Board finds that the grant of the variances would result in two driveways adding traffic directly into an already difficult intersection, rather than just one.

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

The alleged difficulty was self-created by the applicant's desire to go forward with a plan that makes it a bit easier to run utilities to the two lots, and the applicant faces no unnecessary hardship if the application is not granted.

NOW, THEREFORE, BE IT RESOLVED, that the application for variances as set forth above and in the application is hereby denied.

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

Mr. Zigler: Thank you very much for taking time and examining the map and really going over the decision. Thank you very much.

Chairman Wright: Mr. Zigler, we appreciate your showing up here and the evidence you presented we thought was done in a very professional manner. We appreciate your time.

Mr. Zigler: Thank you.

Chairman Wright: The only other matter of business is accepting the minutes of the June 7, 2012, meeting.

*****MOTION**: Mr. Vasti made a motion to accept the minutes of June 7, 2012; seconded by Mr. Morlang. Hearing all in favor; the motion was carried.

*****MOTION**: Mr. Keegan made a motion to adjourn the meeting of June 21, 2012; seconded by Mr. Morlang. Hearing all in favor; the motion was carried.

Respectfully submitted,

Mary Pagano
Acting Secretary
Zoning Board of Appeals