

**TOWN OF STONY POINT
ZONING BOARD OF APPEALS
Minutes of December 19th, 2024**

PRESENT:

Mr. Keegan
Mr. Anginoli
Mr. Lynch
Mr. Strieter
Ms. Davis
Mr. Veras (absent)
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 December 19, 2024, to order. Please rise for the Pledge of Allegiance.

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

Chairman Wright called for the first item on the agenda.

Request of Liz Llempen-Urrutia - 85 Cedar Flats Road - App. #24-06 (Area Variance)

Residential Alteration - Accessory Garage expansion
Town of Stony Point Zoning Code, Chapter 215, Article VII Supplementary Building Requirements, 215-30 C.

“For any accessory building having a height in excess of 15 feet, the additional footage in excess of 15 feet shall be added to the rear and side yard requirements.”

Proposed Building height = 16'-4" (measured to mean height between eave and ridge)

Minimum side & rear yard depth required = 11'-4"

Side yard depth proposed = 4'

Variance necessary = 7'-4"

Section: 14.02

Block: 1

Lot: 15.1

Zone: RR

BOARD OF APPEALS

TOWN OF STONY POINT, COUNTY OF ROCKLAND

In the Matter of Application #24-06 of Liz Llempen-Urrutia for area variances from the requirements of the Town Code to permit the renovation of an existing accessory structure with a height of 16' 4" whereas 15' are the maximum permitted by Code, and an existing side yard depth of 4" whereas 11' 4" are required, on an existing lot located at 85 Cedar Flats Road, Stony Point, New York, designated on the Tax Map as Section 14.02, Block 1, Lot 15.1 in the RR Zoning District.

WHEREAS members of the Zoning Board of Appeals personally visited the applicant's property and viewed it and the neighboring properties on or about October 26, 2024; and

WHEREAS this is a Type II Action pursuant to the New York State Environmental Quality Review Act; and

WHEREAS a public hearing was held on November 7, 2024; and

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

The applicant is the owner of the subject parcel which is improved with a single-family home and accessory garage. The applicant renovated the existing accessory garage, including the roof. As a result of the renovations, the height of the roof was raised to 16' 4", but 15' is the maximum permitted by Code. Therefore, the applicant seeks a height variance of 1' 4". The applicant did not change, nor is the applicant proposing to change, the footprint of the structure. However, the new height of the structure changed the side yard computations under the Code, which provides that for any accessory building over 15' feet high, the additional footage in excess of 15' shall be added to the rear and side yard requirements. The existing side yard provides 4' but given the new height over 15', the new side yard requirement is 11' 4". Therefore, the applicant requests a variance of 7' 4" for the existing 4' side yard.

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 on the conditions stated herein, 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) There was 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 on the conditions stated herein. The only thing that has changed is a minor increase in the height of the roof of the accessory garage by 1' 4".
- (2) There was no evidence presented of any other feasible means to achieve the benefit sought without the variances requested.
- (3) The variances are not 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.
- (5) The alleged difficulty was self-created.

NOW, THEREFORE, BE IT RESOLVED, that the application for area variances is hereby approved on the conditions set forth below:

CONDITIONS:

- 1. Compliance with the plans submitted to this Board as part of the application.
- 2. Payment of all due fees and compliance with all other applicable laws, rules, codes, and regulations.

The matter is remanded to the Building Inspector for further consideration in compliance with the terms and conditions hereof.

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

*****MOTION: Mr. Strieter made a motion to approve the application; seconded by Mr. Anginoli. All in favor; the motion was carried.**

**Thomas Wright-yes; Edward Keegan-yes; Joseph Anginoli-yes;
John Lynch-yes; Todd Strieter-yes; Lou Ann Davis-yes; Luis Veras-absent**

Chairman Wright called for the next item on the agenda.

Request of Jennifer Burke - 25 Fairview Drive - App. #24-05 (Area Variance)

Town Zoning Code chapter 215-A Bulk Table, attachment 15-part IA
Use group d.1, column 7, Required side and rear yard depth:
Minimum rear yard depth required = 10'
Proposed rear yard depth = 3.0'
Variance required = 7.0'
Minimum side yard depth required = 10'
Proposed side yard depth = 7.6'* (*dimension to encroaching neighboring building)
Variance required = 2.4'

Town Zoning Code chapter 215, Art VII, Supplementary Building Requirements
Chapter 215-30 Spacing, B. The distance between the principal building and an accessory building shall not be less than 15 feet.
Proposed spacing = 10.6'
Variance required = 4.4'

Section: 10.01 Block: 1 Lot: 48 Zone: RR

**BOARD OF APPEALS
TOWN OF STONY POINT, COUNTY OF ROCKLAND**

In the Matter of Application #24-05 of Jennifer Battiato and Robert Burke for an area variance from the requirements of the Town Code to permit the construction of a 12' x 20' rear yard shed which, as amended during the hearing, provides a rear yard depth of 3.0', whereas 10' is the minimum required by Code, on an existing lot located at 25 Fairview Drive, Stony Point, New York, designated on the Tax Map as Section 10.01, Block 1, Lot 48 in the RR Zoning District.

WHEREAS members of the Zoning Board of Appeals personally visited the applicant's property and viewed it and the neighboring properties on or about October 26, 2024; and

WHEREAS this is a Type II Action pursuant to the New York State Environmental Quality Review Act; and

WHEREAS a public hearing was held on October 3, October 17, November 7, and December 5, 2024; and

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

The applicants are the owners of the subject parcel which is improved with a single-family home. In their original application for variances before this Board, the applicants proposed a 12' x 20' shed in the rear yard, located on the right rear of their property and configured so that the 20' long sides of the shed were roughly parallel with the side of the property, and the shorter 12' sides of the shed were roughly parallel with the front and rear side of the property.

The home on the neighboring property on that side has encroached several feet over onto the applicants' property for many years, pursuant to an easement granted back in 1968. The subject shed as originally positioned came to within 7.6' of that neighboring house and 10' from the actual formal property line on that side. The building inspector determined that this configuration resulted in a 7.6' side setback, but 10' is the minimum required by Code. The shed also provided only 10.6' from the rear of the applicants' own house, whereas the minimum separation between a primary and accessory structure is 15'. The shed as proposed also came to within 3' of the rear property line, whereas 10' is the minimum required by Code. Accordingly, the applicants sought variances for each of these three dimensions.

During the hearing, the Board heard from representatives of the neighboring property owners, who objected to the variances sought based on the proximity to the home on that property. Various alternatives were discussed, and ultimately, as a result of those discussions, the applicants amended their plan to change the location of their proposed shed. In advance of the December 5, 2024, hearing, the applicants presented a new plan dated last revised November 12, 2024, showing the shed rotated 90°. The new configuration results in the front right corner of the shed being 10' from both the side property line and the left rear corner of the neighboring house. Therefore, no side yard variance is required any longer. Additionally, the new configuration provides 18.7' from the shed to the applicants' own home, thereby eliminating the need for that variance as well. The long side of the shed is now parallel to the rear property line at a distance of 3.0'. Therefore, the only remaining variance requested is the rear setback, providing 3.0', whereas 10.0' are required by Code.

The neighboring property owner's representatives wrote an e-mail to the Board dated December 3, 2024, wherein they withdrew their objection conditioned upon the configuration of the shed being in the amended location as described above, which it now is.

There were no other objections to the relief sought.

WHEREAS, this Board has examined the written documentation and reviewed the testimony with respect to the applicants' request for a variance, and, pursuant to the requirements of section 267-b.3 of the Town Law, hereby finds that on the conditions stated herein, the benefit to the applicants 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) There was no evidence presented that the proposed variance would produce any undesirable change in the character of the neighborhood or a detriment to any nearby properties, on the conditions stated herein based on the amended configuration as described above.

having an agreement with a neighbor on DeCamp Court, so it should help downstream the water by picking up the water that builds in these locations as well.

Chairman Wright asked if there was anyone from the public that would like to speak about this application to please come forward. Oksana Hauser, of 8 MacCarthy Circle, addressed the Board. She expresses her concerns about this subdivision project. She addresses the letter she provided the Board with written by her attorney. The letter reads as follows:

December 10, 2024

Zoning Board of Appeals and Planning Board Member
Town of Stony Point
74 East Main Street
Stony Point, NY 10980
zoning@townofstonypoint.org
planning@townofstonypoint.org

RE: Opposition to Proposed Variances for 173 Wayne Ave,
2 Lot Subdivision

Dear Stony Point Zoning Board of Appeals Chairman Thomas Wright and Stony Board Zoning Board of Appeals Members; and Planning Board Chairman Mark Johnson and Planning Board Members:

I represent the neighbors, Timothy and Oksana Hauser of 8 McCarthy Cir, Stony Point, NY 10980; Roseanne and Rocco Montemorano of 5 McCarthy Cir, Stony Point, NY 10980; William and Theresa Heady of 3 De Camp Court, Stony Point, NY 10980; Robert; Ian Wiacek of 4 De Camp Court, Stony Point, NY 10980; Alise and Braden Shiver of 6 De Camp Court, Stony Point, NY 10980; and Joe and Jackie Scheffold of 8 De Camp Court, Stony Point, NY 10980, who live adjacent to, and within the zone of interest, of the property located at 173 Wayne Ave. Stony Point, NY (the "Neighbors"). These Neighbors oppose the proposed 2 lot subdivision at 173 Wayne Ave. Stony Point, NY and oppose the granting of the requested variance for the following reasons.

The proposed subdivision and requested variances will allow for a significantly undersized lots to be created in the RR zone and create a precedent for similar variances throughout the Town.

The RR zone bulk table requires a minimum lot size of 40,000 square feet. The gross total lot area is 2.15 acres (93,654 square feet). Over 40% of the lot, 38,256 square feet, contains delineated wetlands, as shown on the Proposed Grading and Utilities Plan. After deducting 50% of the constrained wetlands, the total usable net lot area is 74,526 square feet.

The proposed subdivision calls for Lot 2 is only 23, 311 square feet, the majority of which is located in constrained delineated wetlands. There is no stated rationale or unique circumstances as to why this subdivision which creates a substandard, significantly undersized, unbuildable lot, should be approved.

The ZBA does not have the authority to grant variances which will result in the creation of an unbuildable lot, unless it is being subdivided to dedicate unbuildable Lot #2 as permanent open space, recreational area dedicated to the Town of Stony Point or the County of Rockland. Here, the creation of an unbuildable Lot #2, without restriction, can result in future requests for variances and future claims of hardship, even though now none currently exists. Dedication of Lot #2 as open space has is not the stated intention of this application, as the Application includes a conceptual layout for 4000 square foot single family residence, placed squaring in the middle of the delineated wetlands. It is within the ZBA's discretion and responsibility to deny applications for variances which would result in unbuildable lots.

Here, even if the application requested a smaller variance by revising the proposed lot sizes to be to more equal, i.e. approximately 40,000 square feet for Lot #1 and 34,526 square feet for Lot #2 this subdivision should not be allowed.

The Neighbors reiterate and adopt the County's Planning Department objections to the variances and subdivision proposal given the amount of wetlands on the lot and ask that ZBA

and the Planning Board deny this application.

The proposed subdivision increases the risk of localized flooding, especially in the lowland area on the south side of Lot #2 which is adjacent to the Hauser property. This area is already impacted by water and drainage issues, as well as flooding during heavy rainstorms. The extensive amount of fill shown in the proposed plan could create detrimental flooding consequences and adversely impact existing septic tanks and septic field systems.

It is also highly doubtful that Lot #2 has enough adequate area for sanitary septic system with adequate separation from the delineated wetlands. As proposed the two-story home and dry wells are all located within the delineated wetlands. Prior to the grant of any variances the ZBA must receive evidence of adequate percolation tests to ensure the Town does not grant permission for subdivision for a substandard, unbuildable lot.

The Neighbors are also concerned that if the ZBA grant the requested variances and the Planning Board grants the subdivision that it will establish a precedent of allowing development on undersized and environmental constrained lots, resulting in overdevelopment throughout the Town of Stony Point.

For all of the reasons set forth above, we ask the ZBA to deny the proposed variances and for the Planning Board to deny the proposed subdivision application.

Thank you for your consideration.

Sincerely,
Susan H. Shapiro

Mrs. Hauser adds that approving this application will set a precedence for the future subdivision applications the Board is presented with. She goes on to express her concerns about flooding, future and present occurrences. Chairman Wright advised that much of her concerns are determined by the Planning Board, so he suggested that she attend the next Planning Board meeting to address these issues. Mr. Lynch asked the applicant to confirm that every agency that needs to be involved has been notified and given time to respond, and Mr. Stoll advised that is correct. Mr. Sheehan advised the Board that the Planning Board meeting is at the end of January, so he is hoping to have a resolution from this Board so they can continue at the Planning Board level. Chairman Wright advised Mrs. Hauser that she can file another FOIL request, and Mr. Sheehan suggested that she ask to inspect the file rather than asking for copies of specific documents.

Chairman Wright asked if the public had any other questions or comments regarding this application. George Potanovic, resident of 418 Old Gate Hill Rd and President of S.P.A.C.E., addressed the Board. He raised his concerns regarding the environmental impact this application has on the neighboring properties. He is also concerned about the precedence it sets to the town if the Board grants the variance.

Chairman Wright asked if the public had any other questions or comments regarding this application. Al Istorico, resident of 2 DeCamp Ct, addressed the Board. Mr. Istorico expressed his initial concerns about the drainage system that could impact the well, any new septic system that could impact his well, and most importantly the water situation. He explained that he has a lot of issues with water in his backyard, making much of it unusable, and he was pleased to hear that Mr. Stoll has offered to drain the water onto Wayne Avenue. He continues to express his approval of the project now that Mr. Stoll has solved much of the issues that have been raised by neighbors, the Rockland County agencies, and the Planning Board.

Chairman Wright asked if the public had any other questions or comments regarding this application. Bill Sheehan addressed the Board. He reiterated that Mr. Stoll's property is unique in the fact that it is deep, so he meets all the required setbacks, but will only have the area once the wetland is filled in. He goes on to say that once McCarthy Circle was built, it gave Mr. Stoll the street frontage he needs to subdivide.

Timothy Hauser, resident of 8 McCarthy Circle, addressed the Board. He expressed his concerns about the environmental change the town has experienced over recent years. Mr. Hauser explained that he does not believe there is any amount of fill that will sink in and successfully eliminate the wetlands. He believes that the water problems they are experiencing are only going to get worse. He adds that he has spent approximately \$300,000 on trying to fix his own water problems in his backyard, and he fears that this project will not only reverse the work he has done but make it worse. Mr. Hauser concluded by advising the Board that if they approve this project that is going to ruin his property "there will be hell to pay".

Chairman Wright called for a motion to keep the public hearing open on January 2nd.

*****MOTION: Mr. Keegan made a motion to keep the public hearing open on January 2nd; seconded by Mr. Strieter. All in favor; the motion was carried.**

Chairman Wright called for a motion to close the meeting of December 19, 2024.

*****MOTION: Ms. Davis made a motion to close the meeting of December 19, 2024; seconded by Mr. Strieter. All in favor; the motion was carried.**

Respectfully submitted,

Nicole Flannigan

Secretary
Zoning Board of Appeals