

VILLAGE OF NORTH HAVEN
ZONING BOARD OF APPEALS

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In the Matter of the Application

of

RONALD A. KAYE

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DECISION

No. 391A

This is an application for an area variance to enable the subdivision of an improved 157,241 square foot parcel in the R-1 Zoning District into two (2) lots. The premises is 39 Actors Colony Road and the Suffolk County Tax Map number is 901-1-2-21. The Building Inspector's turndown or denial letter was dated August 11, 2016, and the application dated September 16, 2016 was filed by applicant on October 13, 2016 and subject to applicant's repeated adjournments considered by the Board at each successive meeting until the February 2017 meeting at which time the record was closed.

FINDINGS

The Board makes the following findings:

1. This is an application to split a 157,241 square foot parcel where one lot would be 77,241 square feet and the other 80,000 square feet.
2. The property is located on the west side of Actors Colony Road.

3. Proposed Lot No. 1 is improved with a residence, multiple patios, in-ground swimming pool, dog pen, detached shed and a stone waterfall.
4. Proposed vacant Lot No. 2, the proposed lot with 77,241 square feet, is at the corner of Actors Colony Road and Corwin Road.
5. Contiguous with and immediately north of applicant's parcel is the 3.1 acre Wald parcel (Tax Lot 22).
6. Immediately east and across Actors Colony Road from the applicant's parcel and the Wald parcel are the following:
 - A. 4.4 acre Frye parcel (Tax Lot 26);
 - B. 2.7 acre Saltzman parcel (Tax Lot 27.9);
 - C. 3 acre Stelle parcel (Tax Lot 27.10); and
 - D. 6 acre Stelle parcel (Tax Lot 26).
7. Immediately north of the Frye parcel are the following:
 - A. 2 acre parcel (Tax Lot 25);
 - B. 2.1 acre parcel (Tax Lot 24); and
 - C. 2.1 acre parcel (Tax Lot 7).
8. Immediately west and across Corwin Road is the 5.4 acre Mather parcel (Tax Lot 12).

9. Immediately east of Mather and across Actors Colony Road are the following:
 - A. 4 acre Gere, now Lauer, parcel (Tax Lot 31.3);
 - B. 3.4 acre Buffet parcel (Tax Lot 32.3);
 - C. 1.8 acre parcel (Tax Lot 32.2); and
 - D. 1.8 acre parcel (Tax Lot 32.1).
10. Immediately south of the Buffet parcel are the following:
 - A. 7.7 acre parcel (Tax Lot 9); and
 - B. 7.7 acre Skolnick parcel (Tax Lot 10.3).
11. Actors Colony Road is 1,970 linear feet long extending in a northerly direction between South Ferry Road and its dead end terminus between the Wald and Frye parcels.
12. The Board is personally familiar with the Actors Colony Road neighborhood: as applicant's representative correctly observed during his February presentation to the Board, Actors Colony Road - notably the lots described in paragraphs 5, 6, 7, 8, 9 and 10 above - this neighborhood is surrounded by smaller lots.
13. Applicant's parcel and each parcel described in paragraphs 5, 6, 7, 8, 9 and 10 as well as the

Actors Colony Road means of access and the encircling smaller lots - all nonconforming in lot area - are all depicted on the Suffolk County Tax Map which is part of the record in this matter.

14. To the naked eye the prevailing character of the Actors Colony Road neighborhood is a neighborhood of larger lots each improved with single residences.
15. To the naked eye the neighborhood of larger lots appears different from the encircling area of smaller nonconforming lots, none of which - excepting incident to a prior subdivision - infiltrate into the larger lot neighborhood.
16. To the naked eye there is no gradual change in lot area between the typical larger lots on Actors Colony Road and the smaller lots encircling Actors Colony Road: absent a gradual change in lot areas, the effect of the smaller lots is to frame or make separate and distinct the larger lots on Actors Colony Road.
17. The Village of North Haven is the mixture of different neighborhoods: there are, as applicant's representative correctly repeatedly

observed, areas with a concentration of small lots, modern subdivisions complying with the R-80 Zoning District standards and then an area such as Actors Colony Road which is noteworthy because it is different, unique and almost entirely consisting of described property, not parcels which are the product of a modern subdivision process.

18. If one were to consider subdividing the lots on Actors Colony Road by means of variances, demolitions, re-subdivisions, house relocations and the like - and assuming some measure of success in the efforts - there is a risk the following changes could occur in the Actors Colony Road neighborhood:

- A. Applicant (Lot 21): 2 lots;
- B. Wald (Lot 22): 2 lots;
- C. Frye (Lot 26): 2 lots;
- D. Stelle (Lot 28): 3 lots;
- E. Gere (Lot 31.3): 2 lots;
- F. Buffet (Lot 32.3): 2 lots;
- G. (Lot 9): 4 lots;
- H. (Lot 10.3): 4 lots;
- I. Mather (Lot 12): 3 lots.

19. The net impact of the foregoing would be an addition of 15 lots within the Actors Colony Road neighborhood.
20. Applicant's representative has acknowledged that any grant of the relief requested herein is a precedent: when asked by the Board to express a view on the effect of a precedent applicant's representative assured the Board any such grant would be a precedent and as a precedent would be available to compel a similar outcome on any later application.
21. No argument was offered to avoid the use of such a precedent on the calculations in paragraphs 18 and 19 above.
22. The Suffolk County Planning Commission pursuant to §§ A14-14 ff. of the County Administrative Code has reported this is a matter for local determination only.
23. Wesley Frye, an owner of 52 Actors Colony Road, and as a matter of public record a current applicant for a subdivision before the Village Planning Board submitted a letter on November 7, 2016 expressing no opposition to this application.

24. Applicant purchased the subject premises in 1995 at which time the R-80 Zoning District was in effect.
25. The Board conducted its initial hearing on this matter on November 7, 2016 at which time applicant's representative introduced the application and there was extensive testimony addressing how to identify the boundaries of the neighborhood in which applicant's parcel is located, the significance of any grant of relief as a precedent enabling other subdivisions, and the disparate relationship between the variance sought measured by percentage and the variance outcome, i.e., the creation of a new building parcel.
26. Applicant's representative reported at the December 13, 2016 meeting that the applicant sought to buy part of a contiguous parcel but applicant refused to pay the neighbor's price. The balance of the meeting again concerned the impact of any grant of relief as precedent and the inability to control any such precedent.
27. At the January 10, 2017 meeting, the Board acknowledged receipt of letters from four (4)

neighbors but applicant's representative objected to any consideration because those letters were not filed ten (10) days in advance so the letters were handed back to the four (4) neighbors sitting in the audience. The balance of the meeting concerned how to identify the boundaries of the neighborhood in which applicant's parcel is located and, again, concerns about the inability to control the role of any outcome as precedent.

28. The record closed on February 14, 2017.

DISCUSSION

This application is governed by Village Law § 7-712-b(3). The Board is required to balance a consideration of benefit to the applicant if the relief sought is granted against harm to the neighborhood if the relief sought is granted. In evaluating an application the Board is required to address the five (5) standards listed in the aforesaid subsection.

Much of the record here focused on the recognition of Actors Colony Road as a neighborhood different from other neighborhoods in the Village and different from the neighborhoods near Actors Colony Road. Applicant's representative sought over and over again to enlarge the Actors Colony Road neighborhood in order to dilute or distort the

distinctly larger lot sizes dominating the Actors Colony Road neighborhood. Obvious is the side by side assemblage of large lots on Actors Colony Road including Tax Lots 12, 21, 22, 26, 27.9, 27.10, 28, 31.3, 9 and 10.3. Equally obvious is the difference between these lots and the lots encircling Actors Colony Road and extending south of the Actors Colony Road neighborhood and west of both Actors Colony Road and South Ferry Road. Actors Colony Road is not the product of a modern subdivision process, the lots lack any uniform configuration, almost all is especially oversized and as a result as the applicant's representative observed "Actors Colony Road has a better street address" and "Actors Colony Road has a better connotation." (Transcript November 7, 2016 page 52). To the extent applicant's representative was suggesting by these statements that Actors Colony Road - the larger lots - is different and separate, the Board agrees with his observation.

In addressing an identification of the territory constituting the "neighborhood" for purposes of applying Village Law § 7-712-b(3)(b)(1), the overwhelming concern was the effect of a grant of the relief requested on that neighborhood. Clearly any grant of relief would not likely serve as a beneficial precedent if applied to the many very small entirely nonconforming lots encircling Actors Colony Road as depicted on the Suffolk County Tax Map in this record. The concern was

whether a grant of relief would - in its capacity as a precedent - risk detriment to the Actors Colony Road neighborhood, meaning the larger lots, enabling additional subdivisions and over time a change in and loss of the present neighborhood. Applicant's representative made clear any grant of relief would be a precedent useful on later applications for similar relief. When asked if this outcome could be avoided applicant's representative without hesitation explained the outcome was unavoidable.

That the relief sought expressed as a percentage was not substantial did not diminish the substantial detriment to the neighborhood if the relief were granted and then applied as a precedent compelling the same outcome over and again in the neighborhood. The applicant's parcel is one of many similar parcels each eligible for the same relief. So the overall effect of any grant of relief must be considered. Stated differently if the Board takes into consideration the benefit to the applicant if the relief sought is granted against the detriment to the neighborhood if the relief sought is granted and if as the Board finds the neighborhood is the larger lots on Actors Colony Road exclusive of the separate encircling smaller lots then on a balancing the detriment is significantly greater than the benefit. This is particularly meaningful to the extent the Actors Colony Road neighborhood is unique in the Village of

North Haven and its uniqueness is of value to both the neighborhood and the community at large, as these terms appear in Village Law § 7-712-b(3)(1). Not inconsistent with this analysis is that the Board has no knowledge of ever granting area variance relief in this neighborhood in order to create a new nonconforming vacant lot as is requested here.

Applicant at no point has claimed ignorance in 1995 or since of the R-80 Zoning District requirements, effectively allowing a finding his hardship is self created. And applicant at no point addressed detriment to the neighborhood. Effectively applicant avoided addressing the difficult parts of the analysis required here.

CONCLUSION

On a balancing as required, the Board places weight on the first standard, i.e., introduction of an undesirable change, the third standard, i.e., substantiality or magnitude of overall effect and the fifth standard, i.e., self created difficulty. The Board also places weight on the effect of a grant of relief as precedent, particularly as precedent would impact the Actors Colony Road neighborhood. On the basis of the above findings and discussion, and upon a balancing and weighing as required, this application is denied.

Poitras	-	Aye	Cox	-	Aye
Fitzpatrick	-	Abstained	Hatfield	-	Aye
Brooks	-	Absent	Daly	-	Aye

May 9, 2017

