

VILLAGE OF WARWICK, NEW YORK
ZONING BOARD OF APPEALS

-----X
In the Matter of the Application of
ROBERT AND RANDI BARLOW,
Designated as Tax Map Section 206, Block 1, Lot 38

DECISION

For Two Area Variances from the
Village of Warwick Zoning Board Of Appeals.
-----X

THIS APPLICATION of Robert and Randi Barlow (hereinafter the “Applicants”) comes before the Village of Warwick Zoning Board of Appeals (“Board”) as a request for area variances from the minimum side yard setback requirement applicable to properties containing single-family dwellings and from the required setback distance between a principal and accessory building in connection with the construction of a proposed addition on an existing single-family dwelling.

PRELIMINARY STATEMENT

The Applicants are the owners of a parcel of land located at 19 Poplar Street, Warwick, New York, shown on the Village tax maps as Section 206, Block 1, Lot 38. The property consists of approximately 0.36 acres in the Residential (R) District and is improved with a single-family dwelling.

The application before this Board, received on or about July 8, 2024, seeks (1) an area variance from the Bulk Area Requirements of the Zoning Code to reduce the side yard setback from 20 feet to 9.6 feet; and (2) an area variance from Village Code § 145-62.B to reduce the required setback distance between the principal building and accessory garage from 15.3 feet to 2.4 feet from the porch and to 4 feet, 5 inches from the dwelling.. The variances are sought for the purpose of constructing an addition on the existing single-family dwelling.

The quorum of the Board present at the August 27, 2024 meeting voted to grant the requested area variances, pursuant to the terms and conditions set forth in this decision and all applicable State and Village Code requirements, including any required permits from the Building Department.

PUBLIC HEARING AND SEQRA

The public hearing on this Application, upon a notice duly published, was held on August 27, 2024, when it was closed. In accordance with the State Environmental Quality Review Act

("SEQRA"), the Board determined that this application was a Type II action, requiring no further environmental review. 6 N.Y.C.R.R. §§ 617.5(c)(16), (17).¹

COUNTY GML § 239-l, -m or -n REPORT

This application was not required to be referred to the Orange County Department of Planning under General Municipal Law § 239-l, -m or -n.

DECISION

Village Code § 145-41, Bulk Table, Table of Bulk Requirements –

Minimum Side Yard Setback: Area Variance

Village Code § 145-62.B, Distance Between a Principal Building and an Accessory Building: Area Variance

Village Code § 145-41 contains a Table of Bulk Requirements that sets forth the bulk regulations applicable to uses within each use group as designated in the Use Table. Pursuant to the Use Table -- the Table of Use Requirements -- one-family residences are in Use Group "b." *See also* Village Code § 145-23.1(A)(1). The Table of Bulk Requirements requires a minimum side yard setback of 20 feet for all uses in Use Group "b." The Applicants propose to construct an addition on their existing single-family dwelling that will be located approximately 9.6 feet from the southern side lot line. The Applicants are thus requesting a variance of 10.4 feet from the required side yard setback to allow construction of the proposed addition.

Additionally, Village Code § 145-62.B provides that "[t]he distance between a principal building and an accessory building shall be no less than the height of the accessory building but in no event less than fifteen (15) feet." The property contains an existing garage with a height of 15.3 feet, and the Applicants are seeking to construct the dwelling addition approximately 4 feet, 5 inches from the garage with a porch approximately 2.4 feet from the garage. The Applicants are thus requesting a variance of 10 feet, 10.6 inches for the dwelling and 12.9 feet for the porch from the required distance between the residence and accessory garage.

Consistent with its statutory obligations under New York State Village Law § 7-712-b when considering an area variance, the Board balanced the benefit to the Applicants as weighed

¹ Under 6 N.Y.C.R.R. §§ 617.5(c)(16) and (17), the following are considered a Type II action under SEQRA: "granting of individual setback and lot line variances and adjustments" and "granting of an area variance for a single-family, two-family or three-family residence."

against the detriment to the health, safety and welfare of the neighborhood or community if the requested variance were granted. Further, as also required by statute, the Board took into consideration the following five issues in its balancing test:

1. Whether an undesirable change would be produced in the character of the neighborhood, or a detriment to nearby properties would be created, by the granting of the requested area variances.
2. Whether the benefit sought by the Applicants could be achieved by some method, feasible for the Applicants to pursue, other than area variances.
3. Whether the requested area variances were substantial.
4. Whether the requested area variances would have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
5. Whether the difficulty claimed by the Applicants was self-created.

The Board was also aware of its obligation to grant the minimum variances that it deemed necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

The Board began by discussing whether an undesirable change would be produced in the character of the neighborhood, or a detriment to nearby properties would be created, by the granting of the requested area variances, and whether the requested area variances would have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The Board considered the character of the neighborhood, which is residential, and consists of single-family dwellings on similarly sized lots. The Board noted that the Applicants' dwelling currently has a legal preexisting nonconforming side yard setback; specifically, the dwelling is presently located 9.6 feet from the southern side lot line. Additionally, there are existing steps located closer to the southern site lot line than the proposed addition, which will be removed, and there is an existing deck located where the proposed addition will be constructed that will also be removed. The Board found that the proposed addition will be located the same distance from the southern side lot line and garage as the existing dwelling and deck, and will not alter the character of the neighborhood. The Board concluded that the variances requested would not produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties and would not have an adverse impact on the physical or environmental conditions in the neighborhood.

The Board also weighed whether the variances requested were substantial. The Board determined that the variances were substantial; however, the Board again noted that the proposed addition will not be located closer to the garage or side lot line than the existing nonconforming dwelling and deck.

The Board also considered whether the alleged difficulty was self-created, and whether the benefit sought by the Applicants could be achieved by some alternative method feasible for the Applicants to pursue. The Board determined that the alleged difficulty was self-created, as the Applicants are seeking to construct an addition that does not comply with the side yard setback and will be located closer to the accessory garage than is permitted under the Zoning Code. In considering whether the benefit sought could be achieved by another method feasible for the Applicants to pursue, the Board noted that the Applicants are seeking to renovate the downstairs area of their dwelling into a functional space with a family room, accessible bathroom for their elderly mothers, and laundry room. Due to the configuration of the existing garage on the property, the Applicants are unable to build the addition in a different position. The Board determined that there was no feasible alternative for the Applicants to pursue to construct an addition of the desired size without area variances.

CONCLUSION

As a consequence of the Board's discussions, the Zoning Board of Appeals hereby grants the requested area variances described and discussed above, to the extent noted above, conditioned upon the following:

- (1) the Applicants shall obtain site plan approval from the Planning Board within six months of the date of this decision; and
- (2) the Applicants shall obtain a building permit and commence and diligently pursue construction within six (6) months of the date of this Decision or the variance shall become null and void pursuant to Village Code § 145-152(L).

The Board hereby finds that the variance as granted is the minimum variance necessary and adequate and, at the same time, will preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

On motion by Member John Prego, seconded by Member Margaret Politoski:

Chairperson John Graney	<u>Aye</u>
Member John Prego	<u>Aye</u>
Member Margaret Politoski	<u>Aye</u>
Alternate Member Nikki Delille	<u>Aye</u>
Member Jonathan Burley	<u>Absent</u>
Member Wayne Greenblatt	<u>Absent</u>

Issued by Board: August 27, 2024

Written Decision Signed: September 5, 2024



John Graney, Chairperson

I, Raina Abramson, Village Clerk, do hereby certify that the foregoing Determination was filed in the Office of the Village Clerk on September 5, 2024, and copies provided to the Building Inspector and mailed to the Applicant.



RAINA ABRAMSON, CLERK
VILLAGE OF WARWICK, NEW YORK