

VILLAGE OF WARWICK, NEW YORK  
ZONING BOARD OF APPEALS

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In the Matter of the Application of  
LAILA AND PETER PROULX,  
Designated as Tax Map Section 213, Block 1, Lot 8

**DECISION**

For Eight Area Variances from the  
Village of Warwick Zoning Board Of Appeals.  
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THIS APPLICATION of Laila and Peter Proulx (hereinafter the “Applicants”) comes before the Village of Warwick Zoning Board of Appeals (“Board”) as a request for eight (8) area variances from the bulk requirements of the Zoning Code applicable to properties containing single-family dwellings and from the required setback distance between a principal and accessory building. The variances are sought to allow for the construction of a 1,980 square foot single-family residence and to retain an existing nonconforming garage that was constructed without approval from the Village. *See* Village Code §§ 145-41, 145-62.B, and Table of Bulk Requirements.

**PRELIMINARY STATEMENT**

The Applicants are the owners of a parcel of land located at 9 Campbell Road, Warwick, New York, and shown on the Village tax maps as Section 213, Block 1, Lot 8. The property consists of approximately 8,125 square feet located in the Residential (R) District and contains a nonconforming garage located within the side and rear yard that was built without the necessary approvals from the Village (the “garage”). The existing garage is not a permissible use of the property as it constitutes an accessory structure without a principal use on the property.

The application before this Board, received on or about February 14, 2024, originally sought twelve (12) area variances to allow for the construction of a 2,500 square foot single-family residence and to maintain the existing 939 square foot garage. Specifically, the original application requested area variances to: (1) reduce the minimum lot area from 20,000 square feet to 8,125 square feet; (2) reduce the minimum lot width from 100 feet to 65 feet; (3) reduce the front yard setback from 35 feet to 31 feet; (4) reduce the side yard setback for the proposed residence from 20 feet to 12 feet; (5) reduce the side yard setback for the proposed residence from 20 feet to 18 feet; (6) reduce the total side yard setback for the proposed residence from 50 feet to 30 feet; (7) reduce the side yard setback for the garage from 10 feet to 6 feet, 7 inches; (8) reduce the rear yard

setback for the garage from 10 feet to 5 feet; (9) reduce the street frontage from 80 feet to 65 feet; (10) increase the maximum development coverage from 35% to 43%, (11) increase the floor area ratio from 0.25 to 0.27; and (12) reduce the required setback distance between a principal and accessory building under Village Code § 145-62.B from 22 feet to 16 feet.

During the course of proceedings, the Applicants revised their plan at the request of the Board to present a project that was in greater conformity with the Village Zoning Code and neighborhood, particularly with respect to the size, location and appearance of the garage. The application presently before this Board, as revised by the site plan prepared by Irace Architecture, last revised April 15, 2024, proposes to construct a 1,980 square foot single-family residence and to reduce the size of the existing nonconforming garage to 688 square feet. The revised application requests eight (8) area variances to: (1) reduce the minimum lot area from 20,000 square feet to 8,125 square feet; (2) reduce the minimum lot width from 100 feet to 65 feet; (3) reduce the front yard setback from 35 feet to 31 feet; (4) reduce the side yard setback for the proposed residence from 20 feet to 12 feet; (5) reduce the total side yard setback for the proposed residence from 50 feet to 32 feet; (6) reduce the street frontage from 80 feet to 65 feet; (7) increase the maximum development coverage from 35% to 40%; and (8) reduce the required setback distance between a principal and accessory building under Village Code § 145-62.B from 22 feet to 16 feet.

### **PUBLIC HEARING AND SEQRA**

The public hearing on this Application, upon a notice duly published, was held on March 26, 2024, April 23, 2024, and May 28, 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) and (17).<sup>1</sup>

### **COUNTY GML § 239-l, -m or -n REPORT**

This application has been referred to the Orange County Planning Department for review and report. The Board received the Planning Department's report, dated March 19, 2024, which stated that it did not appear that intermunicipal or countywide impacts would result if the Board found that granting relief was warranted in this matter and recommended this matter be a local determination.

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<sup>1</sup> Under 6 N.Y.C.R.R. § 617.5(c)(16) and (17), the following are considered Type II actions 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."

## 2009 DECISION

On August 17, 2009, the Board issued a decision granting the prior owners of the property variances from the minimum lot area, lot width, side setback for both sides (reducing the side yard setbacks from 20 feet to 17.5 feet  $\pm$  6 inches), total side yard setback (reducing the total side yard setback from 50 feet to 35 feet) and street frontage in connection with the proposed construction of a 30 ft. x 44 ft., two-story single-family dwelling in the center of the lot ("2009 Decision"). As set forth in the 2009 Decision, the prior owners initially sought to convert the existing garage to a single-family dwelling, and the application evolved as meetings progressed to leaving the garage as is and constructing a single-family dwelling in the approximate center of the property. (*See* 2009 Decision at p. 1). The 2009 Decision explains that "[u]ltimately the Board, applicant and concerned neighbors appeared to agree that the best plan would be to either remove garage entirely and construct a sfd [single-family dwelling] in the approximate center of the lot or move the garage to the approximate center of the lot and convert it to a sfd [single-family dwelling] and perhaps expand it." (*Id.*). Additionally, "[t]he maximum footprint of the building was to be not more than 30 feet X 44 feet and a 2-story sfd [single-family dwelling] was thought to be the best configuration." (*Id.*).

The Board's grant of variances in the 2009 was "conditioned upon (1) the sfd [single-family dwelling] having a footprint of not larger than 30 feet X 44 feet and being a 2-story building, and the side setbacks being 17 ½ (+/- 6 inches) feet on both sides and (2) the applicants razing the garage or moving it to the approximate center of the lot and converting it to a sfd [single-family dwelling], and thoroughly removing the concrete pad and restoring that area to its natural condition, and no CO shall be granted before the condition is satisfied." (*Id.* at p. 3). The 2009 variances expired by the prior owners not commencing and diligently constructing the single-family dwelling within twelve months. The Applicants have now applied for approval of similar relief.<sup>2</sup>

The Board's prior grant of area variances to allow the construction of a single-family dwelling on the property constitutes precedent that should be followed unless there are changed circumstances or another rational basis for not following it. *See, e.g., Margulies v. Town of*

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<sup>2</sup> This application is not eligible for a "rehearing" of the prior lapsed approval decision of this Board. A rehearing, which must be a unanimous vote of the Board to occur, can only be used if the request is to "reverse, modify or annul" the prior decision. *See* Village Code § 145-152(K); Village Law § 7-712-a(12). The Applicants are not requesting that the 2009 Decision approving the prior owners' application be reversed, modified or annulled and cannot make such request as those variances have long since expired. Therefore, it is appropriate to treat this application as a new application.

*Ramapo*, 2024 WL 1545457, at \*2 (2d Dept. 2024); *Monte Carlo 1, LLC v. Weiss*, 142 A.D.3d 1173, 1175–76 (2d Dept. 2016). Here, the present application is not identical to the prior owners’ application. This application seeks additional variances for the front yard setback, development coverage, and required setback distance between a principal and accessory building under Village Code § 145-62.B, and also seeks larger variances for the side yard setback and total side yard setback, although it complies with the side yard setback for one side yard. Additionally, the Applicants have proposed a different size and configuration for the dwelling and seek to retain and modify the garage, specifically, to reduce its size from 939 square feet to 688 square feet, relocate it outside of the side and rear yards, and replace the Gambrell style roof with a simple farmhouse style gable roof. The Applicants’ home will not have a basement and they have requested the garage be permitted to remain in order to provide necessary storage space.

Here, the Board is not obligated to grant only the same relief that was granted in 2009. Although the 2009 Decision does constitute precedent, the Applicants’ plan and requested variances are different from the prior application, and the Board must consider the Applicants’ plan and the particular variances requested in evaluating the present application. With respect to the condition in the 2009 Decision that required the garage to be either removed or moved and converted to a single-family dwelling, the Applicants are not seeking to keep the existing garage “as is” in its present location as had been requested at some point by the prior owners, and the Applicants do not agree that removing the garage is the best plan as the prior owners had agreed. Instead, the Applicants have proposed to reduce the size of the garage, relocate it outside of the side and rear yard, and modify its design to better fit with the neighborhood. The Applicants have also proposed a different footprint for the dwelling; specifically, 33 feet by 30 feet for the main structure, with a front porch and back porch (the length when measured to include the porches the width would be up to 42 feet; the porches do not extend the entire length of the home). The Board may consider the new configuration proposed as well as the Applicants’ desire to keep and the garage and proposed modifications to the garage. The Board is not required under the 2009 Decision to require the removal of the garage or the same exact building footprint approved at that time. Rather, the Board can find that the Applicants’ new plan is just as appropriate as the prior owners’ plan.

## DECISION

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

Minimum Lot Area: Area Variance

Minimum Lot Width: Area Variance

Minimum Front Yard Setback: Area Variance

Minimum Side Yard Setback: Area Variance

Minimum Total Side Yard Setback: Area Variance

Minimum Street Frontage: Area Variance

Maximum Development Coverage: Area Variances

### 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 Applicants are requesting seven (7) area variances from the bulk requirements applicable to Use Group “B” to allow construction of a 1,980 square foot single-family residence and to reduce and keep the existing nonconforming garage. Specifically:

- (1) Variance of 11,875 square feet from the required minimum lot area of 20,000 square feet to allow a lot area of 8,125 square feet.
- (2) Variance of the 35 feet from the required minimum lot width of 100 feet to allow a lot width of 65 feet.
- (3) Variance of 4 feet from the required minimum front yard setback of 35 feet to allow a front yard setback of 31 feet for the front porch.
- (4) Variance of 8 feet from the required minimum side yard setback of 20 feet to allow a side yard setback of 12 feet on the eastern property line.
- (5) Variance of 18 feet from the required total side yard setback of 50 feet to allow a total side yard setback of 32 feet.
- (6) Variance of 15 feet from the required street frontage of 80 feet to allow street frontage of 65 feet.
- (7) Variance of 5% from the maximum permitted development coverage of 35% to allow development coverage of 40%.

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 existing nonconforming garage has a height of 22 feet, and the Applicants are seeking to construct the proposed residence approximately 16 feet from the garage. The Applicants are thus requesting a variance of 6 feet 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 against the detriment to the health, safety and welfare of the neighborhood or community if the requested variances 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, some of which have accessory garages. The Board noted that the existing nonconforming garage is an eyesore and conflicts with the architectural style and aesthetics of the community. The Board discussed how the Applicants have revised the project to reduce the size of the garage from 939 square feet to 688 square feet, relocate

the garage outside of the side and rear yards, replace the Gambrell style roof of the garage with a simple farmhouse style gable roof, reduce the size of the proposed home from 2,500 square feet to 1,980 square feet, increase the side yard setbacks for the house, and reduce the development coverage variance. The Board further noted that the Applicants have included an image of the proposed home and modified garage which demonstrates how the structures will be designed to complement the architecture and aesthetics of the neighborhood. The Board found that the proposed dwelling will be similar to others in the area in terms of scale, architecture and front yard setback. The Board determined that with the revisions, and provided the design of the dwelling and modified garage be consistent with the image on the plan, the project will not alter the character of the neighborhood. Additionally, the Board acknowledged that the Applicants have a landscaping business and that use of the garage in connection with such business could impact the character of the neighborhood, as could use of the garage as a second dwelling unit. The Board thus found it was appropriate to restrict the use of the garage as an accessory garage to the single-family dwelling only and provide that the garage shall not be used for residential or business purposes.

The Board determined that the proposed dwelling and modified garage will not result in any no adverse visual or other impacts on physical or environmental conditions. Specifically, the Board found that the design of the proposed dwelling and modified garage is aesthetically pleasing and complements the neighborhood, and the additional traffic, water usage, and wastewater from one single-family dwelling in a residential district will be minimal. However, the Board acknowledged that the additional impervious surface area could impact drainage patterns in the neighborhood. The Board noted that the Applicants will be required to obtain site plan approval from the Planning Board and determined that the Applicants will need to provide adequate stormwater management measures to the satisfaction of the Planning Board. With this condition, the Board determined that there will be no adverse impacts from stormwater runoff. The Board concluded that with the aforementioned conditions – requiring the dwelling and garage to be constructed and modified consistent with the plan including the example of the proposed look, style, scale, color and shape shown on the plan, requiring the Applicants to obtain site plan approval from the Planning Board and to provide adequate stormwater measures to the satisfaction of the Planning Board, and restricting the use of the garage as accessory to the dwelling only and not for residential or business purposes– 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 weighed heavily that there was no undesirable change in neighborhood and no adverse impact on the physical or environmental conditions as their discussions continued.

The Board also weighed whether the variances requested were substantial. The Board determined that numerically, the variances were substantial, but this does not prevent the Applicants from obtaining a variance under the balancing test.

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 a dwelling on a nonconforming lot that does not meet the zoning requirements and to modify and relocate an existing nonconforming garage that was constructed without approval, albeit not by the Applicants. In considering whether the benefit sought could be achieved by another method feasible for the Applicants to pursue, the Board noted that the nonconforming lot area, lot width and street frontage are existing conditions and there is no way to build on the existing lot without obtaining these variances. Additionally, the Board found that there is no way to construct the desired dwelling and keep the garage (as modified) without variances from the front yard setback, side yard setback, total side yard setback, development coverage and setback distance between a principal and accessory building. The Board noted that during the course of proceedings the Applicants revised the plans to eliminate the need for certain variances and reduce the size of the variances from the side yard setback, total side yard setback and development coverage. The Board found that the Applicants are proposing a modest size home that is consistent with the size of other homes in the area. The Applicants would be limited to a 15-foot dwelling if they were required to comply with the total side yard setback requirement. The Board acknowledged that the garage is needed for storage space as the dwelling will be constructed on a slab and will not have a basement. The Board noted that although the Applicants may be able to reduce the size of the dwelling and/or garage further to eliminate the variances for the front yard, development coverage and setback distance between the residence and garage, doing so would not result in the benefit desired, as it would not provide the Applicants with the amount of space desired. The Board concluded that there were no feasible alternatives for the Applicants to pursue to achieve the benefit sought. To the extent there may be any feasible alternatives for some of the variances that would allow the Applicants to construct a smaller dwelling and/or have a smaller garage, the Board found that this as well as the substantial and self-

created nature of the variances were outweighed by the fact that there would be no change to the character of the neighborhood and no adverse impacts to the physical or environmental conditions.

### 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 dwelling and garage shall be constructed and modified in compliance with the site plan prepared by Irace Architecture, entitled Proposed Residence for the Proulx Property, last revised April 15, 2024, including compliance with the example of the proposed look, style, scale, color and shape of the new home and reworked garage shown on the plan;
- (2) the Applicants shall obtain site plan approval from the Planning Board within six months of the date of this decision;
- (3) the Applicants shall have proper measures in place to handle the stormwater runoff from the additional impervious area to the satisfaction of the Planning Board;
- (4) the garage shall only be used as an accessory garage to the single-family dwelling and shall not be used for residential or business purposes;
- (5) the portion of the garage being removed shall include removing the concrete pad and restoring that area to its natural condition; and
- (6) the Applicants shall obtain building permits and commence and diligently pursue construction within six (6) months of the date of this Decision or the variances shall become null and void pursuant to Village Code § 145-152(L).

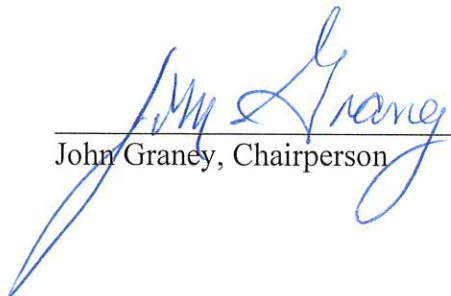
The Board hereby finds that the variances as granted are the minimum variances necessary and adequate and, at the same time, will preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

On motion by Member John Prego, seconded by Member Jonathan Burley:

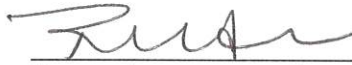
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|---------------------------|---------------|
| Chairperson John Graney   | <u>Aye</u>    |
| Member John Prego         | <u>Aye</u>    |
| Member Margaret Politoski | <u>Aye</u>    |
| Member Jonathan Burley    | <u>Aye</u>    |
| Member Wayne Greenblatt   | <u>Absent</u> |

Issued by Board: May 28, 2024

Written Decision Signed: May 30, 2024

  
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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 June 3, 2024, and copies provided to the Building Inspector and mailed to the Applicant.

  
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RAINA ABRAMSON, CLERK  
VILLAGE OF WARWICK, NEW YORK