

VILLAGE OF WARWICK, NEW YORK
ZONING BOARD OF APPEALS

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In the Matter of the Application of
M&L EQUITY AUTO, LLC,
Designated as Tax Map Section 210, Block 11, Lots 5 & 16.22

DECISION

For An Area Variance from the
Village of Warwick Zoning Board Of Appeals.
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THIS APPLICATION of M&L Equity Auto, LLC (hereinafter the “Applicant”) comes before the Village of Warwick Zoning Board of Appeals (“Board”) as a request for an area variance from the Bulk Area Requirements of the Zoning Code applicable to one-family residences in connection with the proposed transfer of 5,963 square feet from the property located at 42 Orchard Street to the property located at 18 Elm Street.

PRELIMINARY STATEMENT

The Applicant is the contract vendee¹ of a 5,963 square foot portion of a parcel of land located at 42 Orchard Street in the Village of Warwick, New York, and shown on the Village tax maps as Section 210, Block 11, Lot 5,² and is the owner of a parcel of land located at 18 Elm Street in the Village of Warwick, New York, and shown on the Village tax maps as Section 210, Block 11, Lot 16.22. The 42 Orchard Street property consists of approximately 12,589 square feet located in the Residential (R) District and is improved with a single-family residence. The 18 Elm Street property consists of approximately 1.605 acres located in the Light Industrial (LI) District and contains a car wash (the Warwick Car Wash).

The application before this Board, received on or about January 25, 2024, seeks an area variance to reduce the required minimum lot area of the 42 Orchard Street property from 20,000 square feet to 6,625 square feet in connection with the proposed transfer of 5,963 square feet from 42 Orchard Street to the Applicant’s property at 18 Elm Street.

¹ See Letter from Beattie & Krahulik, dated January 19, 2024, re: Variance Application of M&L Equity Auto, LLC.

² The Applicant has submitted an Owner’s Endorsement from Vanessa Mann, the owner of the property located at 42 Orchard Street, dated March 25, 2024, authorizing the within application.

PUBLIC HEARING AND SEQRA

The public hearing on this Application, upon a notice duly published, was held on March 26, 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)(17).³

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

The properties involved in this application are not located within 500 feet of a trigger under General Municipal Law § 239-*m* and, therefore, referral of the application to the Orange County Planning Department was not required.

DECISION

Village Code § 145-41, Bulk Table, Table of Bulk Requirements – Minimum Lot Area: 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 lot area of 20,000 square feet for all uses in Use Group “b,” including one-family residences.

The Applicant proposes to transfer 5,963 square feet from the 42 Orchard Street property, which is improved with a one-family residence, to the Applicant’s car wash property at 18 Elm Street. The proposed transfer will reduce the lot area of the 42 Orchard Street property from approximately 12,589 to approximately 6,625 square feet. The Applicant is thus requesting a variance of 13,375 square feet from the required minimum lot area of 20,000 square feet for 42 Orchard Street to allow a minimum lot area of 6,625 square feet.

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 Applicant as weighed against the detriment to the health, safety and welfare of the neighborhood or community if the

³ Under 6 N.Y.C.R.R. § 617.5(c)(17), the following is considered a Type II action under SEQRA: “granting of an area variance for a single-family, two-family or three-family residence.”

requested variance was 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 variance.
2. Whether the benefit sought by the Applicant could be achieved by some method, feasible for the Applicant to pursue, other than an area variance.
3. Whether the requested area variance was substantial.
4. Whether the requested area variance 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 Applicant was self-created.

The Board was also aware of its obligation to grant the minimum variance 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 variance. The Board considered the character of the neighborhood along Orchard Street, which is residential. The Board found that the variance would make the 42 Orchard Street property similar in size to the nearby residential lots on the north and south side of Orchard Street, and the new rear lot line for 42 Orchard Street would be consistent with the rear lot lines of the neighboring lots to the east. Although the proposed transfer of land would result in a portion of 18 Elm Street being located in the Residential (R) District, where car washes are not permitted, and the remainder being located in the Light Industrial (LI) District, the Applicant indicated that it will seek a zoning amendment from the Village Board of Trustees to change the zoning of the portion being transferred to Light Industrial (LI). The Board determined that the variance must be conditioned on the portion of the property being transferred to 18 Elm Street only being used as permitted under the Village Zoning Law, including any amendments thereto, and the Applicant obtaining subdivision approval from the Planning Board. The Board found that there were no adverse effects or impacts on the physical environment related to the lot area variance. The Board concluded that, with the aforementioned conditions, the variance would not produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties.

The Board also weighed whether the variance requested was substantial. The Board determined that the 13,375 square foot variance requested by the Applicant was substantial. The Board also considered whether the alleged difficulty was self-created, and whether the benefit sought by the Applicant could be achieved by some alternative method feasible for the Applicant to pursue. The Board determined that the alleged difficulty was self-created, as the Applicant is seeking to reduce the lot area of the 42 Orchard Street property to allow a transfer of a portion of that property to 18 Elm Street. In considering whether the benefit sought could be achieved by another method feasible for the Applicant to pursue, the Board concluded that there was no feasible alternative for the Applicant to pursue to achieve the benefit sought.

CONCLUSION

As a consequence of the Board's discussions, the Zoning Board of Appeals hereby grants the requested area variance described and discussed above, to the extent noted above, conditioned upon (1) the Applicant obtaining subdivision approval from the Planning Board; and (2) the portion of the property being transferred to 18 Elm Street being used only as permitted under the Village Zoning Law (Village Code Chapter 145), including any amendments thereto. 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 have been requested.

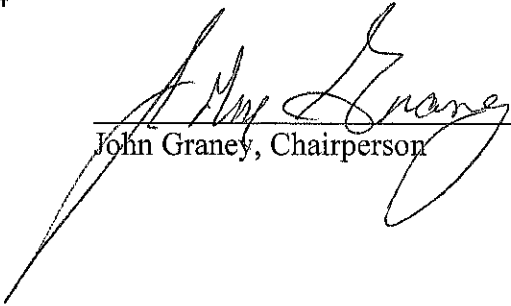
Pursuant to Village Code § 145-152(L), unless construction is commenced and diligently pursued withing 6 months of the date of the granting of a variance, such variance shall become null and void. Construction shall not commence until a building permit is issued.

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>
Member Jonathan Burley	<u>Absent</u>
Member Wayne Greenblatt	<u>Absent</u>

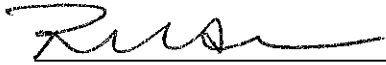
Issued by Board: March 26, 2024

Written Decision Signed: April 25, 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 April 25, 2024, and copies provided to the Building Inspector and mailed to the Applicant.



RAINA ABRAMSON, CLERK
VILLAGE OF WARWICK, NEW YORK