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March 26, 2024

**SENT BY EMAIL**

Mr. John Graney  
Chairman  
Zoning Board of Appeals  
Village of Warwick  
77 Main Street  
Warwick, NY 10990  
Email: [planning@villageofwarwick.org](mailto:planning@villageofwarwick.org)

Re: Zoning Board of Appeals Application of Laila and Peter Proulx  
Premises: 9 Campbell Road, Warwick, NY 10990 (the "Lot")

Dear Members of the Board:

This office represents Frances Sinclair, the adjoining neighbor to the property which is the subject of this application and the person who will be most affected by the determination of the Board. Our client opposes the relief requested because the grant of the variances would have a detrimental effect on the character of the neighborhood because of the size and character of the maximum variance from the bulk regulations to which the applicant is entitled has already been determined by this Board in its decision dated August 17, 2009.

This applicant seeks 11 substantial area variances that will change the character of the neighborhood while being in violation of a prior decision of the this ZBA, which creates the following issues:

1. Whether the application satisfies the 5 part test in Village Law 7-712-b[3]; and
2. Whether the applicant is entitled to a greater variance that this board had granted in

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its prior decision dated August 17, 2009.

**Applicable Law**

Under Village Law 7-712-b[3] the “zoning board of appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such local law, to grant area variances as defined herein.

Under Village Law 7-712-b [3][b], the ZBA in making its determination, shall take into consideration:

1. the benefit to the applicant if the variance is granted, as
2. weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant.

In making *the above determination*, the board shall also consider:

1. whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
2. whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
3. whether the requested area variance is substantial;
4. whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
5. whether the alleged difficulty was self-created; which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

Under Village Law 7-712-b[3][c] the “board of appeals, in the granting of area variances, shall grant the ***minimum variance*** that it shall deem 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.

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Finally, under Village Law 7-712-b[3][d] the “board of appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of the zoning local law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.”

### **The Prior Application**

On May 18, 2008, the prior owners of the premises, Michael and Kerry Demetroules, applied to this Board for a variance of the bulk area requirements of the code. The Public hearing of this application and the amended application was heard on May 18, 2008, September 16, 2008, January 20, 2009, June 15, 2009, July 20, 2009 and August 17, 2009.

Kerry Demetroules filed an application before this Board to convert an existing garage on the Lot to a single-family dwelling. The garage was the sole structure on the Lot and illegal, as it was an accessory and not a principal use and less than 10 feet from the rear lot line. As the meeting progressed, the ZBA determined that the applicant did not own the Lot, but rather it was owned by the Welling Thomas Estate, and permission for the variance was ultimately filed by the estate.

The same conditions exist today. The zoning regulations in the Village of Warwick Zoning District have not been made less restrictive since that application. The public hearings on that application were conducted over several meetings of the Board and the issues concerning whether the applicant should be granted relief from the Zoning Bulk Regulations that this Board had been thoroughly reviewed and considered.

As this Board is well aware, even if it determines that an applicant is entitled to relief from the bulk zoning regulations, it is duty bound to grant the *minimum variance* necessary to relieve the applicant from its hardship. This is especially so in this instance where the applicant is expected to know from the public records that the lot was substandard and that this Board had already determined the variances to which the Lot was entitled. In 2009, the Board ultimately did not grant the variances the applicant sought but did grant the applicant limited relief as follows:

1. A reduction in the lot area from 20,000 square feet to 9,000 square feet. **The current request is from 20,000 feet to 8,125 square feet.**
2. A lot width from 100 feet to 65 feet. **This is the same request in this application.**

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3. One side setback from 20 feet to 17 1/2 feet. **The current application seeks two side setbacks, one from 20 feet to 12 feet and the other from 20 feet to 18 feet. A difference of 12 1/2 feet.**
4. A total side setback from 50 feet to 35 feet. **The current application is from 50 feet to 30 feet.**
5. A street frontage variance from 80 feet to 65 feet. **The current application is the same.**

The Board further conditioned that relief by requiring that the applicant either move the existing garage to the approximate center of the Lot and convert it to a single family dwelling or raise the garage, remove the concrete floor/foundation and return the area to lawn and build a new home in the approximate center of the Lot with a foot print of no more than 30' by 40' and with not more than 2 floors.

The old application did not grant many of the variances sought in this application such as:

1. The front yard setback for the proposed dwelling from 35 to 31 feet.
2. The front yard set back for the proposed dwelling from 35 to 31 feet.
3. A second side yard setback for the proposed dwelling from 20 to 12 feet.
4. Keeping the existing garage with a rear yard setback from 10 to 5 feet.
5. A maximum development coverage from 35 to 43%.
6. A distance between the principal building and the accessory building from 25 to 27% ratio.

Indeed the current application presumes it can keep the current illegal garage when the prior application specifically required it to be eliminated or moved to the center of the Lot.

The prior Zoning Board of Appeals Decision dated, August 17, 2009, is attached to this letter.

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### The Character of the Neighborhood

As demonstrated by the table below, **seven of the nine** surrounding properties have a lot size less than 20,000 square feet. Note, the square footage is taken from the GIS maps not image mate which differs slightly. However, only **two of the seven** substandard lots have a lot size less than 8,125 square feet. In addition, each house had been built prior to the enactment of the current zoning code and **eight of the nine houses** were built between 1890 to and 1930 long before the Village had enacted its first code in 1965.

Surrounding Properties	House number	Square feet	Applicants	Difference	Improvements	Year built
213-1-3	17 Campbell Rod	7504	8125	-621	House and garage	1920
213-1-4	15.5 Campbell road	6245	8125	-1880	House	1930
213-1-5	15 Campbell Road	11828	8125	3703	House	1920
213-1-6	13 Campbell road	8256.28	8125	131.28	House and garage	1935
213-1-7	11 Campbell Road	8578.33	8125	453.33	House	1973
213-1-9	40 Oakland Avenue	32431	8125	24306	House	1890
213-3-12	12 Campbell road	9517	8125	1392	House and garage	1928
213-3-11	36 Oakland Avenue	94049	8125	85924	house and garage	1928
213-3-14	31 Welling Avenue	8922	8125	797	houses and garage	1900

If the ZBA permits the applicant to build the proposed house and keep the current illegal garage, then it will be the first time in 50 years that a new house is being built in this neighborhood. The house will look nothing like the homes in the area. Moreover, the house will be on a lot that is smaller than 71% of the substandard lots.

### The variances are substantial.

As indicated in the Table below the variances are substantial and range from 59.38% for the lot area to 8% between the proposed single family dwelling and the illegal garage. The average variance is 28.42%

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	Units.	Proposed	Units	Difference	Percentage difference
Lot Area	20000	8125	Square feet	11875	59.38%
Lot Width	100	65	feet	35	35.00%
Front Set Back for proposed Dwelling	35	31	feet	4	11.43%
Front Yard for proposed Dwelling	35	31	feet	4	11.43%
Side Setback for proposed dwelling - 1	20	12	feet	8	40.00%
Side Setback for proposed dwelling - 2	20	18	feet	2	10.00%
Total Side Setback for proposed dwelling	50	30	feet	20	40.00%
Side Yard for Existing Garage	10	6.58	feet	3.42	34.20%
Rear Yard for Existing Garage	10	5	feet	5	50.00%
Street Frontage	80	65	feet	15	18.75%
Maximum Development Coverage	35%	43%	ratio	8%	22.86%
Floor Area Ratio	25%	27%	ratio	2%	8.00%
Distance between Principal Building and Accessory Building to be determined					
Average					28.42%

**The Benefit to the Applicant if the Variance is Granted**

The applicant purchased the property from Demetroulas. It knew or should have known that the use of the Lot was severely limited. Granting the applicant the requested variances would be giving them a windfall far beyond any benefit to which they might be entitled, if any and that windfall would come at the expense of the character of the neighborhood. The Zoning Law does not require this Board to grant windfalls.

**The Detriment to the Health, Safety, and Welfare of the Neighborhood**

Certainly, a new house poses more traffic, septic issues, waste issues, and sewer issues. While we recognize that these are issues that can be worked out with the planning board, they still affect the health, safety, and welfare of the neighborhood.

**Undesirable Change in the Character of the Neighborhood or Detriment to the Nearby Properties**

Permitting the house and the two-car garage will provide an undesirable change to the neighborhood. As indicated earlier, it permits a new house to be built. Indeed, it is probably the

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first house to be built in the last 50 years. There is, of course, increased traffic as a result of the new house coming in and out of Campbell Road.

### **The Benefit Sought by the Applicant Can be Achieved by Some Other Method**

In accordance with the last ZBA decision, the applicant can either move the garage to approximately the center of the property or build a home. It cannot do both. Accordingly, the applicant can receive the benefit of a home by raising the garage and building the house.

### **Adverse Affect or Impact on the Physical Environmental Conditions in the Neighborhood**

As previously mentioned an additional home will cause more traffic in the neighborhood.

### **The alleged difficulty is self-created.**

The alleged difficulty is self-created. A purchaser of real property is presumed to have performed its due diligence prior to purchasing real property. Here, the applicant knew or should have known that when he purchased the property it had an illegal two-car garage. The applicant knew or should have known that the Lot might be unbuildable. They made that choice and have no right to have the Board bail them out of their self created hardship.

### **The Applicant Should Not Be Permitted to Go Beyond the Parameters of the August 17, 2009 Decision**

The most egregious portion of this application is that the applicant seeks to keep the illegal garage and also build a singly-family dwelling, which this board turned down on August 17, 2009. The applicant has not shown a change in circumstances between August 17, 2009 and this application. Under those circumstances the most relief the applicant can expect is that which this Board determined was adequate in its 2009 decision.

Moreover, by keeping the garage, the applicant needs additional variances for both the garage and the distance between the garage and the proposed single family dwelling. This increases the non-conformity of the use.

### **Conclusion**

The Village of Warwick made a policy decision requiring much larger lots that had been used in past. There is no reason why this board should overturn that policy. If a variance is required it should be the absolute minimum variance. It is our position that the applicant should not be granted any variances because it knowingly bought a substandard lot with no right to expect it was acquiring a buildable lot and, if the Board is inclined to grant any variance, it should not grant any

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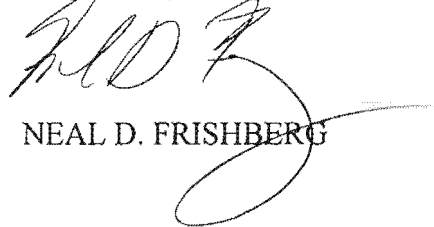
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variance greater than the Board granted in 2009.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "ND Frishberg", with a large, sweeping loop at the end.

NEAL D. FRISHBERG



DETERMINATION OF THE ZONING BOARD OF APPEALS  
OF THE VILLAGE OF WARWICK, NEW YORK

WHEREAS, MICHAEL & KERRY DEMETROULES have applied to this Board for a variance of the Bulk Area Requirements of the Code, and

WHEREAS, a public hearing on this application and the amended application of said applicants were held at 77 Main Street, Warwick, New York on 5/18/08 and continued on 9/16/08, 1/20/09, 6/15/09, 7/20/09 and 8/17/09, and

WHEREAS, at aid hearing(s) all interested persons were given an opportunity to be heard, the Board finds as follows:

FINDINGS OF FACT

1. The Estate of Welling Thomas is the owner of premises located at 9 Campbell Road, Warwick, New York, designated on the Village tax map as Section 213 Block 1 Lot 8.

2. The application has been made for a variance of the Zoning Law reducing lot area from 20,000 sq. ft to 9,000 sq. ft.; lot width from 100 ft to 65 ft.; total yard setback from 50 ft. to 35 ft.; street frontage from 80 ft. to 65 ft. for the purpose of construction of a 30 ft. X 44 ft. single family dwelling and reduction of side yard setback from 10 ft. to 6.9 feet and rear yard setback from 10 ft. to 3.6 ft. for an existing garage.

3. An inspection of the site, and the evidence and testimony as summarized from the meeting(s) show that:

The original application was filed by Kerry Demetroules to convert an existing garage on tax lot #8 to a single family dwelling (sfd). The garage was the sole structure on the lot and illegal because it was an accessory and not a principal use, and apparently, less than 10 feet from the rear and 1 side line. No survey was produced showing the garage "as built", the only survey produced showed the garage as "staked out".

It was determined that the lot was actually owned by the Welling Thomas Estate and permission for the variance request was ultimately filed by the Estate.

As the meetings progressed, the application evolved from conversion of the existing garage into a sfd to leaving the garage as is and constructing a 30 foot X 44 foot, 2-story sfd in the approximate center of the lot. Ultimately, the Board, applicant and concerned neighbors appeared to agree that the best plan would be to either remove the garage entirely and construct a sfd in the approximate center of the lot or move the garage to the approximate center of the lot and convert it to a sfd and perhaps expand it. The maximum footprint of the building was to be not more than 30 feet X 44 feet and a 2-story sfd was thought to be the best configuration. The time within which construction could begin was discussed and a 6 month extension of Section 145-152.L was deemed reasonable under the circumstances.

Under the final scenario, the following variances would be required: reduction of lot area from 20,000 sq. ft. to 9,000 sq. ft., lot width from 100 ft. to 65 ft., 1 side setback from 20 feet to 17 ½ (+/-) feet and total side yard setback from 50 ft. to 35 ft., and street frontage from 80 ft. to 65 ft.

There was concern that (+/-) was vague so that the Board decided to place a limitation of 6 inches.

A. An undesirable change will not be produced in the character of the neighborhood and a detriment to nearby properties will not be created by the granting of the area variances. The large (30 foot X 30 foot) existing garage which appears to have less than the required setbacks and an apparent detriment to the adjacent property owner will be removed. The character of the neighborhood will not be changed by allowing an additional sfd on the lot. Even though the lot area is less than required by the Code, it is typical of other lots in the neighborhood.

B. The benefit sought by the applicant (construction of a sfd) cannot be achieved by some method, feasible for the applicant to pursue, other than the variances. No other land is available to enlarge the lot.

C. The requested variances are numerically substantial. However, this is an existing lot and typical of many lots in the neighborhood.

D. The proposed variances will not have an adverse effect or impact upon the physical or the environmental conditions in the neighborhood or district.

E. The alleged difficulty is self-created. The lot line could be eliminated.

F. These area variances should be granted based upon a consideration of the benefit to the applicant as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant.

G. 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 have been requested.

4. The proposed action is an Unlisted action and will not result in any significant adverse environmental impact for the reasons hereinbefore set forth.

#### **RESOLUTION**

NOW, THEREFORE, BE IT RESOLVED, that it is determined, based on the information and analysis presented to the Board, that the proposed action will not result in any significant adverse environmental impact.

The foregoing resolution was submitted by Pamela Arace and seconded by John Prego



For the Resolution    Against the Resolution    Abstaining    Absent


John Graney				X
John Prego	X			
Pamela Arace	X			
Jonathan Burley	X			
Matthew Blaskovich	X			

NOW, THEREFORE, BE IT RESOLVED, that the application for the following Bulk Area variances be granted: reduction of lot area from 20,000 sq. ft. to 9,000 sq. ft., lot width from 100 ft. to 65 ft., 1 side setback from 20 feet to 17 ½ (+/- 6 inches) feet, total side yard setback from 50 ft. to 35 ft., and street frontage from 80 ft. to 65 ft.; and that a 6 month extension of Section 145-152.L be granted thereby giving the applicants 12 months from the date of granting the variances to commence construction. The variances are conditioned upon (1) the sfd 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, 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.

The foregoing resolution was submitted by Matthew Blaskovich and seconded by Pamela Arace

	For Resolution	Against Resolution	Abstaining	Absent
John Graney				X
John Prego	X			
Pamela Arace	X			
Jonathan Burley	X			
Matthew Blaskovich	X			

Dated: Warwick, New York  
August 17, 2009

  
\_\_\_\_\_  
JOHN PREGO, Asst. Chairman

Unless construction is commenced and diligently prosecuted within 12 months of the date of the granting of a variance, such variance shall become null and void.

Construction cannot commence until a building permit is issued.

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**PART II - IMPACT ASSESSMENT (To be completed by Lead Agency)**

A. DOES ACTION EXCEED ANY TYPE I THRESHOLD IN 6 NYCRR, PART 617.4? If yes, coordinate the review process and use the FULL EAF.  
☐ Yes ☒ No

B. WILL ACTION RECEIVE COORDINATED REVIEW AS PROVIDED FOR UNLISTED ACTIONS IN 6 NYCRR, PART 617.6? If No, a negative declaration may be superseded by another involved agency.  
☐ Yes ☒ No

C. COULD ACTION RESULT IN ANY ADVERSE EFFECTS ASSOCIATED WITH THE FOLLOWING: (Answers may be handwritten, if legible)

C1. Existing air quality, surface or groundwater quality or quantity, noise levels, existing traffic pattern, solid waste production or disposal, potential for erosion, drainage or flooding problems? Explain briefly:

No

C2. Aesthetic, agricultural, archaeological, historic, or other natural or cultural resources; or community or neighborhood character? Explain briefly:

No

C3. Vegetation or fauna, fish, shellfish or wildlife species, significant habitats, or threatened or endangered species? Explain briefly:

No

C4. A community's existing plans or goals as officially adopted, or a change in use or intensity of use of land or other natural resources? Explain briefly:

No

C5. Growth, subsequent development, or related activities likely to be induced by the proposed action? Explain briefly:

No

C6. Long term, short term, cumulative, or other effects not identified in C1-C5? Explain briefly:

None

C7. Other impacts (including changes in use of either quantity or type of energy)? Explain briefly:

None

D. WILL THE PROJECT HAVE AN IMPACT ON THE ENVIRONMENTAL CHARACTERISTICS THAT CAUSED THE ESTABLISHMENT OF A CRITICAL ENVIRONMENTAL AREA (CEA)?

☐ Yes ☒ No If Yes, explain briefly:

E. IS THERE, OR IS THERE LIKELY TO BE, CONTROVERSY RELATED TO POTENTIAL ADVERSE ENVIRONMENTAL IMPACTS?

☐ Yes ☒ No If Yes, explain briefly:

**PART III - DETERMINATION OF SIGNIFICANCE (To be completed by Agency)**

**INSTRUCTIONS:** For each adverse effect identified above, determine whether it is substantial, large, important or otherwise significant. Each effect should be assessed in connection with its (a) setting (i.e. urban or rural); (b) probability of occurring; (c) duration; (d) irreversibility; (e) geographic scope; and (f) magnitude. If necessary, add attachments or reference supporting materials. Ensure that explanations contain sufficient detail to show that all relevant adverse impacts have been identified and adequately addressed. If question D of Part II was checked yes, the determination of significance must evaluate the potential impact of the proposed action on the environmental characteristics of the CEA.

☐ Check this box if you have identified one or more potentially large or significant adverse impacts which MAY occur. Then proceed directly to the FULL EAF and/or prepare a positive declaration.

☒ Check this box if you have determined, based on the information and analysis above and any supporting documentation, that the proposed action WILL NOT result in any significant adverse environmental impacts AND provide, on attachments as necessary, the reasons supporting this determination.

Village of Warwick Zoning Board of Appeals

Name of Lead Agency

Date

8/17/09

Print or Type Name of Responsible Officer in Lead Agency

Asst Chairman

Title of Responsible Officer

Signature of Responsible Officer in Lead Agency

Signature of Preparer (if different from responsible officer)

NGIS

Reset