

VILLAGE OF WARWICK, NEW YORK
ZONING BOARD OF APPEALS

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In the Matter of the Application of
NATASHA WALKOWICZ SHEA,
Designated as Tax Map Section 203, Block 2, Lot 3

DECISION

For An Area Variance from the
Village of Warwick Zoning Board Of Appeals.
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THIS APPLICATION of Natasha Walkowicz Shea (hereinafter the “Applicant”) comes before the Village of Warwick Zoning Board of Appeals (“Board”) as a request for an area variance from the minimum side yard setback requirement applicable to properties containing single-family dwellings in connection with the construction of a proposed addition on an existing single-family dwelling.

PRELIMINARY STATEMENT

The Applicant is an owner of a parcel of land located at 21 Woodside Drive, Warwick, New York, shown on the Village tax maps as Section 203, Block 2, Lot 3. The property consists of approximately 0.4 acres in the Residential (R) District and is improved with a single-family dwelling.

The application before this Board, received on or about May 6, 2024, seeks an area variance to reduce the minimum required side yard setback from 20 feet to between 12.1 feet and 15 feet. The variance is sought for the purpose of constructing an addition on the existing single-family dwelling.

PUBLIC HEARING AND SEQRA

The public hearing on this Application, upon a notice duly published, was held on 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).¹

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

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 § 145-41 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 Applicant proposes to construct an addition on her existing single-family dwelling. The addition will be located between 12.1 feet and 15 feet from the southwestern side lot line. The Applicant is thus requesting a variance of between 7.9 feet and 5 feet from the required side yard setback to allow construction of the proposed addition.

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 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 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, and whether the requested area variance 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 Applicant's dwelling currently has a legal preexisting nonconforming side yard setback; specifically, the dwelling is presently located between 10.4 feet and 12.1 feet from the southwestern side lot line. The Board acknowledged that the proposed addition will be further from the southwestern side lot line than the existing dwelling, and will not alter the character of the neighborhood. However, the Board considered that the Applicant's neighbors were concerned that the proposed addition may result in stormwater runoff flowing towards their house, and acknowledged that the proposed addition could impact drainage patterns in the neighborhood. The Board noted that the Applicant will be required to obtain site plan approval from the Planning Board and determined that the Applicant will need to provide adequate stormwater management measures to drain stormwater to the road to the satisfaction of the Planning Board. The Board concluded that with this condition, the variance 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 variance requested was substantial. The Board determined that the variance was not substantial, as the proposed addition will be further from the side lot line than the existing nonconforming dwelling.

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 construct an addition that does not comply with the side yard setback requirement. In considering whether the benefit sought could be achieved by another method feasible for the Applicant to pursue, the Board noted that the Applicant is seeking to keep a one-

story dwelling to accommodate a disability and is unable to build upward. The Board determined that there was no feasible alternative for the Applicant to pursue to construct an addition of the desired size without an area variance.

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 the following:

- (1) the Applicant shall obtain site plan approval from the Planning Board within six months of the date of this decision;
- (2) the Applicant shall have proper stormwater management measures in place to drain stormwater to the road to the satisfaction of the Planning Board;
- (3) the Applicant 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 _____:

Chairperson John Graney

Member John Prego

Member Margaret Politoski.

Member Jonathan Burley

Member Wayne Greenblatt

Issued by Board: June 28, 2024

Written Decision Signed: June __, 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 _____, and copies provided to the Building Inspector and mailed to the Applicant.

RAINA ABRAMSON, CLERK
VILLAGE OF WARWICK, NEW YORK