

**VILLAGE OF WALDEN:  
ZONING BOARD OF APPEALS**

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In the matter of the application of

**LEROY DEGROODT, SR.**

for a variance from Section 305-6 of the Village Code to permit a subdivision of land into two lots where one lot would have a total lot area of 7,000 s.f. instead of the required 8,000 s.f.

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**FINDINGS OF FACT  
AND  
DECISION**

**TAX MAP NO.  
310-3-11**

The property which is the subject of the application is located at 36 Sherman Avenue and is designated on the Village tax map as Section 310, Block 3, Lot 11. The property is located in an R-4 (single-family) zoning district.

The applicant seeks a variance from Section 305-6 of the Village Code to permit the subdivision of land into two lots where one of the lots would have a total lot area of 7,000 sf where a minimum lot area of 8,000 sf is required.

A public hearing on the application was held on June 2, 2011, at the Village Offices, One Municipal Square, Walden, New York. Notice of said public hearing, including the subject, date, place and time, was duly published and mailed. Proper affidavits of publication and mailings were received from the applicant.

The applicant, Leroy DeGroot, Sr., appeared in person and with his engineer, Thomas Olley, P.E. The testimony and exhibits at the Public Hearing established that the subject property was purchased by the applicant on December 17, 2010, from the County of Orange. The property is some 15,000 square feet in size and is improved by a single-family house that is in a state of complete disrepair. The applicant proposes to demolish the existing house, subdivide the property into two lots and then build two single-family homes on the new lots. The applicant proposes to build two modest homes that fit within the character of the rest of the homes in the neighborhood. The problem the applicant faces is that the zoning law requires lots to have a minimum lot area of 8,000 square feet and one of the two lots created will only be 7,000 square feet. The applicant

stated that he realizes that his hardship is self-created but that he needs to have the subdivision and build two houses because he could not

possibly realize any profit from the property considering the price he paid for the property, the cost of demolishing the existing house and the other back taxes and expenses he has already incurred from the property as well as the cost of constructing a new house.

The Board heard from a neighbor who first questioned the size and type of houses he wanted to build and then raised objections to the proposed subdividing of the property.

The Board unanimously determines that the proposed action is a Type II action under SEQRA.

The Board determines that this is an application for an area variance and that the criteria which the Board must consider in determining whether or not to grant the variance is the factors set forth in Village Law, Section 7-712-b(3).

In considering the benefit to the applicant if the variance is granted as weighed against the detriment to the health, safety and welfare of the neighborhood and community by such grant, the Board has considered the following five factors:

**I. WHETHER AN UNDESIRABLE CHANGE WILL BE PRODUCED IN THE CHARACTER OF THE NEIGHBORHOOD OR A DETRIMENT TO NEARBY PROPERTIES WILL BE CREATED BY GRANTING OF THE VARIANCE?**

The property in question is located in an R-4 (Single-Family) Zoning District. The property is improved by a dilapidated house that has been the subject of Village enforcement proceedings for years. The applicant purchased the property at a tax sale from the County and wishes to demolish the existing house, subdivide the property and build two, new single-family homes on the two lots. The applicant noted that many of the existing homes in the area are built on lots with less than the required minimum lot area of 8,000 square feet. The Board believes that the removal of the blighted building and the addition of two new homes will enhance the overall appearance of the property and the neighborhood. Based upon these facts, the Board determines that the variance requested will not significantly change the character of the neighborhood and will not produce a detriment to nearby properties.

**II. WHETHER THE BENEFIT SOUGHT BY THE APPLICANT CAN BE ACHIEVED BY SOME METHOD FEASIBLE FOR THE APPLICANT TO PURSUE OTHER THAN AN AREA VARIANCE?**

The Zoning Code requires a minimum lot area of 8,000 square feet. The subject property contains 15,000 square feet and a two lot subdivision, if approved by the Planning Board, would require variances for one or both lots depending upon the location of the subdivision line. The applicant proposes to subdivide in such a way that only one of the lots would require a variance. Since there is no mathematical way of subdividing without at least one of the lots needing a variance, the Board determines that there are no other feasible methods for the applicant to pursue other than the granting of the area variance.

**III. WHETHER THE REQUESTED AREA VARIANCE IS SUBSTANTIAL?**

The Zoning Code requires a minimum lot area of 8,000 square feet. The applicant proposes a subdivision where one of the two lots will have an area of only 7,000 square feet. This constitutes a difference of 1,000 square feet or a 12.5% variance. Based upon the information provided by the applicant and recognizing the vast improvement proposed for the property, the Board determines that the variance requested is not substantial.

**IV. WHETHER THE PROPOSED VARIANCE WILL HAVE AN ADVERSE EFFECT OR IMPACT ON THE PHYSICAL OR ENVIRONMENTAL CONDITIONS IN THE NEIGHBORHOOD?**

The Board notes that the property is located in a single-family zone and the applicant's proposal is to construct two single-family homes that would be comparable in size to most of the other homes in the neighborhood. More importantly, the applicant will be demolishing a structure that is dilapidated and which has been uninhabitable for the past 5-10 years because of the interior conditions of the premises. Also, the property itself will be cleared of debris and properly maintained and no longer a blight on the neighborhood. Thus, the Board believes that the variance will not adversely affect the neighborhood.

**V. WHETHER THE ALLEGED DIFFICULTY WAS SELF-CREATED?**

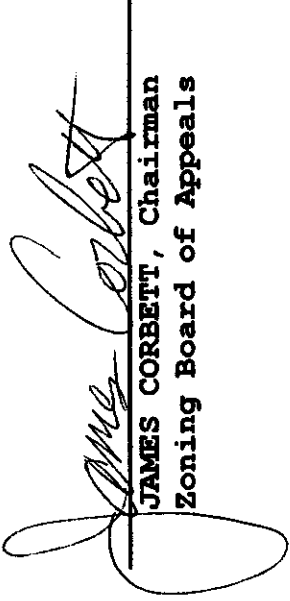
The Board determines that the alleged difficulty is a self-created hardship in that the applicants bought the property at a tax sale knowing of the numerous problems with it over the years. However, this is only one factor to be taken into consideration and it is not the determinative one.

**DECISION**

The Board determines that an area variance should be granted to Leroy DeGroodt, Sr. under Village Law, Section 7-712-b(3) to permit the subdivision of the property into two lots where one of the lots will have a lot area of 7,000 square feet instead of the required 8,000 square feet. The applicant must proceed to the Planning Board and receive subdivision approval from that Board.

Present and voting on this decision:

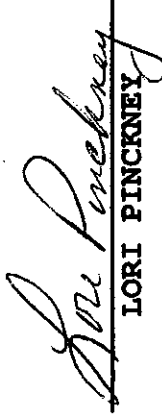
James Corbett,	Aye
David Ohlmer,	Aye
Brenda Adams	Aye
Jason Trafton	Aye
Carolyn Wesenberg	Aye



**JAMES CORBETT, Chairman**  
**Zoning Board of Appeals**

**DATED: WALDEN, NEW YORK**  
**June 6, 2011**

**Filed in the Village Clerk's Office this**  
16<sup>th</sup> **day of June, 2011**



**LORI FINCKNEY**