

Village of Baxter Estates Board of Appeals

FINDINGS OF FACT AND DECISION

March 22, 2023 Public Hearing

(Avila/Kimeldorf Application, 23 Locust Avenue, for
Front Yard, Side Yard, Open Porch Permitted Encroachment
and Front Yard Impervious Surface Variances)

WHEREAS, there has come before this Board the application of Pedro Avila and Laura Kimeldorf, as owners of premises at 23 Locust Avenue, Port Washington, NY, identified on Nassau County Land and Tax Map as Section 5, Block 10, Lot 2 (the “Subject Premises”), for variances from §§175-12, 175-13, 175-15 and 175-18.1 of the Code of the Village of Baxter Estates, to permit various additions and alterations to an existing single family home, on a pre-existing, non-conforming lot, which would result in: (i) a front yard of 31.17’, where the minimum required front yard is 35; (ii) an easterly side yard of 7.4’, where the minimum required side yard is 15; (iii) a 1-story open porch that encroaches into the front yard by 8.83’, where the maximum permitted encroachment is 5’; and (iv) front yard impervious surface of 857 sq. ft., or 46% of front yard lot area, where the maximum allowable impervious surface in a front yard cannot exceed 30%, which in this case would be 559 square feet; and

WHEREAS, the Board has duly conducted a hearing with respect to said application at which all parties in interest were given an opportunity to be heard; and

WHEREAS, the residential area variance application, a Type II action for purposes of the New York State Environmental Quality Review Act (“SEQRA”), was submitted to the Nassau County Planning Commission (the “NCPC”), as required by law, and, as the NCPC has not notified the Village of any objections or modifications within the time frame applicable under the NCPC’s stream-lining rules, this Board may take such action as it deems appropriate; and

WHEREAS, the members of the Board have inspected the Subject Premises and have carefully reviewed the application and all matters offered in support thereof, none being offered in opposition thereto; and

WHEREAS, the Board has made the following findings of fact:

1. The Subject Premises occupy an interior lot in a residential neighborhood within the Village, with frontage on Locust Avenue.
2. The applicants appeared at the hearing with their architect, Gary Lewandowski, R.A.
3. The existing residence at the Subject Premises, like many of the homes on Locust Avenue, is a pre-existing, non-conforming structure, that presently provides: (i) a front yard of only 31 feet, where the required minimum front yard is 35 feet; (ii) a side yard setback of

10.9 feet, where the required minimum side yard is 15 feet; (iii) front yard impervious surface of 920 sq. ft., or 49.3%, where the maximum permitted front yard impervious surface is 30%; and (iv) a detached rear yard garage, which provides a side yard of only 2.5 feet, where the minimum required side yard is 15 feet.

4. The Subject Premises are a unique and difficult lot on which to undertake improvements. While the lot, at 8,757 square feet, actually exceeds the minimum required 8,500 square feet in the Residence A zoning district, the lot width is only 60', and much of the rear yard is not useable in light of the steep slope from the back of the home to the rear property line.

5. The pre-existing, non-conforming home is 1,861 square feet, proposed to be increased to 2,337 square feet, which will be significantly less than the allowable square footage of 3,152 square feet, which is 36% of the lot area. Even with the proposed additions, the resulting home will be significantly smaller in size than most new homes in the Village and surrounding communities.

6. The existing rear yard detached garage which encroaches substantially into the easterly side yard will be removed, and thereby a significant existing encroachment will be removed, benefiting the abutting neighbors.

7. The Board members find that the Applicants' desire for increased living space is necessary to provide living conditions acceptable to modern needs and tastes, even if resulting in a home that remains smaller than typical new or newly expanded homes in the community. The Board finds that there is no feasible alternative location on the Subject Premises to add floor area than as proposed by the Applicant, in light of the narrow lot, and the minimal buildable area to the rear of the home in light of property elevations.

8. The Architect advised the Board that the proposed encroachment for the front entry way is necessary to create a front hall closet for the home, and an aesthetically pleasing and functional entry way for persons entering the home. The Applicant proposes to exceed by 4 feet the 5 foot permitted encroachment for covered porticos. The Architect provided photos of neighboring homes, many of which have front porticos which encroach beyond the 5 foot permitted encroachment area. The proposal with respect to this variance will actually make the home more consistent with the conditions prevailing in the neighborhood.

9. The related extension that will bring the existing recessed entry way flush with the front wall of the existing home will cause that proposed addition to encroach into the front yard no more than does the majority of the front wall of the existing home.

10. The Applicants propose an easterly side yard, "shed" style addition to the home, the front of which is proposed to serve as the home office for Dr. Kimeldorf, with an ADA compliant bathroom, while the rear of that addition will serve as a workshop, to serve some of the function that most suburban homeowners make of garages.

11. The Board notes that the professional office of a doctor is a permitted use under Village Code Section 175-6(K). Dr. Kimeldorf noted that the nature of her consultative

practice involves only one patient at a time, so that it is unusual for there ever to be more than two persons needing parking in the vicinity of the home with respect to her practice.

12. The Board members noted that the appearance of the “shed” style addition from the street, as proposed, contains an entry door, but no windows. The Board members sought ways in which the appearance of the proposed new front wall for the addition might be softened and made more consistent with the existing home. The Architect noted that entry door for the professional office could not be moved from the front wall to the easterly side wall as doing so would eliminate interior space required for an ADA-compliant bathroom. The Board members suggested that the aesthetics of the extension could be made more consistent with the existing single family home exterior if a window consistent with windows on the front of the home be included in the front wall of the addition, on the west side of the proposed entry door. The Applicants and the Architect agreed that same would be an acceptable condition to the grant of the application.

13. The shed-style addition of one story will encroach into the easterly side yard, although not as much as does the pre-existing, non-conforming rear yard detached garage being removed in connection with the proposed project. The abutting neighbor at 25 Locust Ave., who is most impacted by the proposed encroachment into the side yard, Cullen Mealey, appeared and expressed his support for the application. The Board notes that the impacted westerly side yard at 25 Locust Avenue appears to satisfy the 15’ side yard setback, on a street on which many homes fail to satisfy that minimum setback.

14. The proposed second story addition to provide space for a master bedroom will be constructed over pre-existing, non-conforming first floor area; the proposed second story addition will not encroach into the minimum required side yard.

15. The proposed alterations to impervious surface in the front yard, while requiring variances from the maximum allowed 30%, will actually reduce front yard impervious surface. The Architect noted that, by eliminating the detached garage, aggregate impervious surface at the Subject Premises will also be reduced.

16. The pre-existing, non-conforming nature of the home and the lot, situated as it is among other pre-existing, non-conforming homes and lots, minimizes the adverse impacts that might arise from such variances if granted with respect to a lot situated in a neighborhood of conforming lots of 8,500 square feet with 85 feet of lot width. Those circumstance render almost any proposed alteration or addition subject to the need for zoning variances. The Board recognizes the desire of many homeowners in the community, and particularly those in pre-existing, non-conforming homes, to improve their homes to make them both more livable in accordance with current community tastes, and more attractive to potential buyers if and when marketed for sale. The Board recognizes that the ability to make improvements to a home that is small and dated in a community of mostly larger homes improves the quality of the housing stock in the community.

17. The Board heard testimony from the architect that the project was designed in order to obtain the minimum expansions and improvements that the homeowners

require while minimizing the scope of the variances and, therefore, the potential adverse impact on the neighbors and the community.

18. The Board finds that there is need to upgrade the home to address the difficulties that the Applicants are experiencing in light of the small size of the premises and the existing residential structure. The finds the proposed increase reasonable and appropriate under the circumstances described herein.

19. The architect advised the Board that there are no alternatives to the variances sought, as the existing structure and lot size and dimensions drives the design and limits alternatives; alterations in other areas of the home would result in significant costs that would render the project not feasible economically.

20. The Board finds that the proposed front yard, front yard permitted encroachment, side yard and front yard impervious surface variances as proposed are reasonable and appropriate, and necessary to accomplish the modest increase to living space proposed.

21. The Board finds, in light of the pre-existing, non-conforming nature of both the lot and the home, and the need for the home to be expanded to be more in sync with the needs of families now in the community and those seeking to enter the community, that any adverse impacts upon the community and the neighbors created by the proposed alterations are outweighed by the benefits to the applicants.

22. The Board finds that the relatively de minimus variances sought will enable the Applicants to create a residence that is aesthetically pleasing and consistent with the community, and are made necessary by the substandard size of the plot and the home, which are pre-existing, non-conforming aspects of the Subject Premises. The Board finds that there are no feasible alternatives to the variances sought that would enable the Applicants to obtain the benefits that they seek.

23. The Board recognizes that the difficulty confronted by the Applicants, an inability to construct the proposed alterations without obtaining the zoning variances sought, can be deemed self-imposed on the basis that they acquired the home when the applicable zoning restrictions were already in place. Nevertheless, the Board notes that that is merely one of the factors considered by the Board in rendering a decision on a variance application.

24. Although the Board is in no way bound by the support or objection of adjacent neighbors with respect to an application, and the Board deems its function to involve protecting the community at large, as well as adjacent neighbors, the Board notes that no one spoke in opposition to the application. In fact, Cullen Mealey, the neighbor most impacted by the proposed alterations, owner of 25 Locust Avenue, abutting the Subject Premises to the east, spoke in favor of the Application. Furthermore, the Board notes testimony from Applicant and Architect that the neighbors with whom they spoke expressed no opposition to the application. No one expressed any objection to the proposed project or associated variances to the Village.

NOW, THEREFORE, based upon the foregoing findings of fact, this Board has weighed the detriment to the applicant, if the application is denied, against the adverse impact, if any, upon the adjacent property owners and the community if the application were to be granted, and based upon that weighing process, finds that there will be a detriment to the applicant if the application is denied that outweighs any adverse impact upon the neighbors and the community if the application is granted with certain conditions, and, therefore, it is the determination of this Board that the variance application be granted upon the following conditions:


1. All construction and installation in connection with the project presented in this application shall be subject in all respects to the approvals of the Building Department of the Village and, furthermore, shall be effected substantially in accordance with all of the plans submitted by the applicants to this Board, which are more particularly identified as “Avila-Kimeldorf Residence, Proposed 1st & 2nd Floor Additions & Alterations, 23 Locust Avenue, Port Washington, NY 11050,” dated “10.20.22,” with most recent revision date of 12/23/2022, by N2 Design+Architecture, P.C., 315 Main Street, 2nd Floor, Port Washington, New York 11050, comprised of nine sheets, drawings T-100.00, T-101.00, T-102.00T-103.00, DM-100.00, DM-200.00, A-100.00, A-101.00, A200.00 (the “Plans”).

2. The existing detached garage shall be removed in its entirety.

3. The Plans shall be revised by the Applicant to reflect the addition of a window in the front, street-facing wall of the proposed shed-style addition, on the west side of the proposed entry door to said addition, in style reasonably consistent with the windows on the front façade of the home and reasonably acceptable to the Superintendent of Buildings.

4. The variance is granted only to the extent specifically described in the foregoing conditions. Such variance shall not be deemed to permit any construction at any time without a new variance application and prior approval of this Board, unless such construction fully complies in all respects with either (a) the then-existing zoning ordinance of the Village, without giving effect to any impact on such compliance created by the variance now granted, or (b) each condition set forth above, including, but not limited to, the specific Plans referred to herein.

Board of Appeals of the Village of Baxter Estates

By: 
William Haagenson, Chairman

Date: 4/26/2023

