

VILLAGE OF BAXTER ESTATES BOARD OF APPEALS

Findings of Fact and Decision  
April 26, 2023 Public Hearing

(Oates Application, 17 Bayside Avenue, to Legalize Construction of  
Awning on Metal Support Structure Requiring Side Yard Variance)

WHEREAS, there has come before this Board the application (the “Application”) of Robert and Virginia Oates (the “Applicants”), owners of 17 Bayside Avenue, Port Washington, NY, identified on Nassau County Land and Tax Map as Section 5, Block 5, Lot 42 (the “Subject Premises”), for variance from §175-13.A. of the Village Code, to legalize an existing canvas awning on a metal support structure attached to an existing single family home, which has created a 3.5 foot side yard, where the minimum required side yard is 15 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 is a Type II action for purposes of the New York State Environmental Quality Review Act (“SEQRA”), requiring no further action by the Board under SEQRA; and

WHEREAS, the Application was submitted to the Nassau County Planning Commission (the “NCPC”), as required by law, under the agreement between NCPC and the Village for stream-lined referrals of certain land use applications, and NCPC has elected to refrain from providing input within the 7 day period allowed for such input, and so 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 Bayside Avenue,
2. The Applicants appeared at the hearing to present their application.
3. The Applicants stated that they acquired the Subject Premises approximately four years ago, and thereafter worked with the Village building

department to bring certain pre-existing aspects of the property into compliance with the Village Code.

4. The Applicants stated that an old wooden trellis cover had existed over the easterly side yard patio, which the Applicants removed. They advised that due to the layout of the home, the ordinary access to the rear yard is through a side doorway from the kitchen into the easterly side yard, as there is no door in the rear walls of the home. In light of the proximity of the kitchen to the side yard patio, and ingress and egress from the kitchen to that patio, it is a useful and desirable outdoor amenity for recreation.

5. The Applicants advised the Board that they considered several approaches to provide cover from rain and sun for the side patio, and selected a seasonal awning on a metal pole frame attached to the home as a cost-efficient approach that they believed addressed their desire for seasonal use, without implicating the Village Code.

6. To that end, they retained a contractor who sold and installed the canvas awning on a metal support structure over the existing grade level patio in the easterly side yard, which the Applicants had repaired and extended toward their rear yard. The Applicants noted that the contractor did not alert them to the possible need for a permit for the structure.

7. The Applicants apologized for having undertaken the work without the required permits and approvals, and stressed that the error was unintended. The Board finds that the failure to obtain the required approvals and relief prior to the installation was made in good faith.

8. The Board notes that, because the structure is attached to the home, it is deemed part of the home, and so its dimensions must be considered when determining the side yard depth. The awning extends 11.5 feet into the minimum required 15-foot easterly side yard, requiring a variance.

9. The Subject Premises are irregularly shaped. The front property line and the rear property line are not parallel, with the front property line longer than the rear property line. The existing easterly side yard patio is square, but not parallel to the easterly side yard property line, so that the existing overhang encroaches into the side yard to differing lengths, closest in proximity to the property line toward the rear yard, the point at which the encroachment reaches 11.5 feet.

10. The Applicants advised the Board that the awning is used only seasonally, when the Applicants are able to enjoy their outdoor amenities, and the canvas awning, the most visible portion of the encroachment, is removed when the outdoor season ends. The Board also notes that the nature of an awning, a suspended canvas roof

covering open on all sides, is less impactful on abutting neighbors than is a space enclosed with walls.

11. Gail Keenan is the neighbor primarily affected by the encroachment as the owner whose property abuts the easterly side property line of the Subject Premises. Ms. Keenan appeared at the hearing and expressed her support for the application. Ms. Keenan noted that views of the encroachment from her side and rear yards are fully screened by healthy plantings that are situated on and along the shared property line. The Board finds that healthy vegetative screening serves to mitigate any potential adverse impacts.

12. The Board notes that the neighbors who abut the Subject Premises to the rear front upon Ridgeway, and their properties sit at a higher elevation than the Subject Premises, which minimizes any potential impact from the encroaching awning. In any event, the Board notes that no one appeared at the hearing in opposition to the Application, or submitted any written or other evidence of opposition to the Application.

13. The Board notes that by granting the variance for a term of years will enable the Village and the neighbors to understand how the encroachment impacts the neighbors, whether the awning is in fact removed out of season, and whether plantings that serve as a buffer area are adequately maintained for that purpose.

14. The Board finds that the maintenance of the encroaching awning directly advances the benefit sought by the Applicants, and that there is no feasible alternative to legalizing the Subject Work that will achieve the benefits sought.

15. The Board does not factor into its decision the costs and expenses incurred by the Applicant from proceeding in a non-compliant manner, or the fact that the circumstances requiring relief are already in place and so known and visible to impacted members of the community.

16. The Board believes that, had the relief requested in the Application been sought from the Board prior to the installation, the relief would have been granted.

17. The Board finds, in light of the foregoing, that any adverse impacts upon the community and the neighbors created by the Subject Work are outweighed by the benefits to the Applicants, provided that certain conditions are satisfied.

18. The Board recognizes that the difficulty confronted by the Applicants, an inability to maintain the awning without obtaining the zoning variance sought, is clearly self-imposed as the Applicants 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.

19. 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.

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:

The maintenance of the Subject Work, as presently constructed, shall be subject in all respects to the approvals of the Building Department of the Village.

1. For so long as the encroachment hereby permitted is maintained at the Subject Premises, vegetative screening comparable to that which presently exists shall be maintained in healthy condition along the shared property line in the vicinity of the encroachment hereby allowed in order serve as a visual barrier for the benefit of the abutting property to the east.
2. The variance hereby granted is granted for a term of ten years. The Applicant or the successor to Applicant as owner of the Subject Premises shall apply to the Board to extend the variance hereby granted, and such application shall be made in compliance with all rules and regulations then applicable to an application for an area variance, including without limitation, requirements for public hearing and notice to neighbors.
3. The variances are granted only to the extent specifically described in the foregoing conditions. Such variances 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: 

Date: 6/26/25

William Haagenson, Chairman

