

VILLAGE OF BAXTER ESTATES BOARD OF APPEALS

Findings of Fact and Decision
May 24, 2023 Public Hearing

(Mealey Application, 25 Locust Avenue, for
Open Porch Permitted Encroachment Variance)

WHEREAS, there has come before this Board the application of Cullen and Justine Mealey, owners of 25 Locust Avenue, Port Washington, NY, identified on Nassau County Land and Tax Map as Section 5, Block 10, Lot 1 (the "Subject Premises"), for variance from §175-15, of the Village of Baxter Estates Code to permit alterations to an existing single family home, on a pre-existing, non-conforming lot, which would result in a 1-story open porch that encroaches into the front yard by 8.1', where the maximum permitted encroachment is 5'; 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 a corner lot in a residential neighborhood within the Village, with frontage on Locust Avenue to the south, toward which the front of the home is oriented and into which the proposed porch will encroach, and on Tianderah Road to the east. The lot is irregularly shaped, with challenging topography, a feature that is common to homes on the north side of Locust Avenue in the Village.

2. The applicants appeared at the hearing with their architect, Donald Sclare, R.A.

3. Mr. Sclare advised the Board that the Applicants currently have a project underway that is expanding the living space to enable the home to accommodate their growing family. The project underway, creating a 2 floor addition, is Code-compliant.

4. The proposed front yard porch will be 10 feet wide, and extend across the entire front of the home. Without the proposed variance, the width of the porch would not be

adequate to serve as a play area for the family with young children. Mr. Sclare explained that the Subject Premises, like many of the homes on the north side of Locust Avenue, has steeply declining rear yard, which offers little area on which children can play. There is a deck of the rear of the home. The front porch would offer another outdoor recreation area.

5. The Applicants, as well as nearby neighbors residing on Locust Avenue who appeared in support of the Application, described a neighborhood that is oriented toward socializing in the front yards because of the common characteristic of limited rear yard recreation space.

6. The neighbors abutting to the west, at 23 Locust Avenue, Laura Kimeldorf and Pedro Avila, expressed their support for the application. They are the only neighbors who abut the front yard of this corner lot. Neighbors Scott Meyer, of 38 Locust Avenue across the street from the Subject Premises, expressed his support for the application. No one else appeared at the hearing, or submitted any input for or against the Application.

7. Mr. Mealey and Mr. Sclare noted that front porches, including porches extending across the entire front of the home are common on Locust Avenue. Mr. Sclare noted that front porches are a desirable aesthetic feature for a single family home, a perspective with which the Board agrees.

8. The Subject Premises are a unique and difficult lot on which to undertake improvements, with much of the rear yard not useable in light of the steep slope from the back of the home to the rear property line. That fact limits the possibility for feasible alternatives to the relief sought.

9. The Board finds that the Applicants' desire for increased outdoor living space is understandable, and that the proposed width of the porch is necessary to accomplish same as a useful amenity, and not achievable without the variance sought, which the Board finds is not a substantial variance under the circumstances described herein.

10. The Board finds that the proposed front yard permitted encroachment variance as proposed is reasonable and appropriate, and necessary to accomplish the modest increase to outdoor living space proposed.

11. The Board finds, in light of the features common to the Subject Premises and surrounding homes on Locust Avenue, and the need for front yard outdoor living space, that any adverse impacts upon the community and the neighbors created by the proposed alterations are outweighed by the benefits to the Applicants.

12. 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.

13. 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, and that the neighbors most impacted by the proposed alterations, owners of 23 Locust Avenue, abutting the Subject Premises to the west, 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 “Alterations & Additions for the Mealey Residence, 25 Locust Avenue, Village of Baxter Estates, Port Washington, NY 11050,” dated “3/29/23,” comprised of three sheets, drawings A-01, A-02 and A-03 (the “Plans”).

2. 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.




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Board of Appeals of the Village of Baxter Estates

By:  Date: 4/26/23
William Haagenson, Chairman

