

Village of Baxter Estates Board of Appeals

FINDINGS OF FACT AND DECISION

May 22, 2024 Public Hearing

(London Application, 13 Locust Avenue, for
Front Yard Setback Variance)

WHEREAS, there has come before this Board the application (the “Application”) of Ethan and Ferrah London (“Applicants”), owners of premises at 13 Locust Avenue, Port Washington, NY, identified on Nassau County Land and Tax Map as Section 5, Block 10, Lot 117 (the “Subject Premises”), for variances from **§175-12** of the Code of the Village of Baxter Estates, to permit various additions and alterations to a pre-existing, non-conforming single family home, which would result in a front yard of only 22 feet, where the minimum required front yard is 35 feet, and where the pre-existing, non-conforming front yard is only 22 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. Applicant Ethan London appeared at the hearing with Applicants’ architect, Luigi Gileno, 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 a front yard of only 22 feet. While the required minimum front yard ordinarily is 35 feet, **§175-12** of the Code provides that the minimum front yard depth applicable to a home in the Residence A district shall be the same as the average front yard depth of the existing buildings within 200 feet on each side of the lot and within the same block front and district.

4. Architect Gileno represented to the Board that the applicable average front yard for the Subject Premises is 28.4 feet, a factor that itself mitigates the substantiality and the potential adverse impacts of the proposed variance. Architect Gileno also stated that one lot included in the average has a front yard of 56 feet, serving disproportionately to increase that average. Furthermore, Architect Gileno represented to the Board that the home immediately abutting the Subject Premises to the west has a front yard of only 16.5 feet and the home just to the west of that neighbor has a front yard of only 15.25 feet, further serving to minimize the potential adverse impact upon the neighborhood as the variance would not change the character of the immediate neighborhood.

5. The Subject Premises are a unique and difficult lot on which to undertake improvements. 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.

6. The pre-existing, non-conforming home is 1,621 square feet, proposed to be increased to 3,082 square feet, which will be less than the allowable square footage of 3,465 square feet, which is 36% of the lot area. Even with the proposed additions, the resulting home will be smaller in size than most new homes in the Village and surrounding communities.

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 Applicants, in light of the minimal buildable area to the rear of the home due to the natural steep grading of the property.

8. The Board notes that a portion of the proposed second story addition will be constructed over pre-existing, non-conforming first floor area, within the same building footprint; as such, the proposed second story addition will encroach into the minimum required front yard to the same extent, but not more than the pre-existing, non-conforming first floor area.

9. 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 a variance 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 circumstances 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.

10. 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 variance and, therefore, the potential adverse impact on the neighbors and the community.

11. 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 Board finds the proposed increase reasonable and appropriate under the circumstances described herein.

12. The architect advised the Board that there are no alternatives to the variance 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.

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

14. 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.

15. The Board finds that the relatively de minimus variance sought will enable the Applicants to create a residence that is aesthetically pleasing and consistent with the community, and is 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 variance sought that would enable the Applicants to obtain the benefits that they seek.

16. 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.

17. 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 Applicants, 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 Applicants 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 Application be granted upon the following conditions:

1. All construction and installation in connection with the project presented in the 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 “Proposed Additions and Alterations to London Residence, 13 Locust Avenue, Port Washington, NY 11050,” dated “6.5.23,” with most recent revision date of 4/11/2024, by Luigi Gileno Architect, P.C., 485 Underhill Blvd., Suite 304, Syosset, New York 11791, comprised of five sheets, drawings A-1.2, A-4.1, A-4.2, A-4.3, and A-5.1 (the “Plans”).

2. The variance is granted only to the extent specifically described in the foregoing condition. 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: _____