

VILLAGE OF BAXTER ESTATES BOARD OF APPEALS

Findings of Fact and Decision  
July 31, 2024 Public Hearing

(Molis Application, 21 Locust Avenue, for  
Front Yard Setback and Front Yard Impervious Surface Variances)

WHEREAS, there has come before this Board the application (the “Application”), of Vita and Rolandas Molis, owners of premises at 21 Locust Avenue, Port Washington, NY, Residence A zoning district, Section 5, Block 10, Lot 3 on Nassau County Land & Tax Map (the “Subject Premises”), for variances from the following provisions of Code of Village of Baxter Estates: **§§175-12 and 175-15.(B)**, to permit alterations to the front entry and portico that will create a front yard of 22.75 feet, where the minimum required front yard is 35 feet; and **§175-18.1**, to permit additional paved surfaces in front yard that will result in 802.4 square feet of impervious surface in a front yard of 1,868 square feet (or 43% of total front yard), where maximum permitted front yard impervious surface is 560.4 square feet (30%); 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 referral 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 to the south.
2. The Applicants appeared at the hearing with their architect, Donald Sclare, to present their Application. The only other attendee in the audience to speak on the Application was Laura Kimeldorf, owner of the abutting residential premises at 23 Locust Avenue.
3. The Applicants previously appeared before the Board at a public hearing on March 27, 2024, at which the Board considered the Applicant’s prior application seeking variances with respect to the proposed construction of a rear yard deck, and a different proposed configuration of front yard impervious surface (the “March 2024 Application”). The Board, by

written decision adopted after the March 27, 2024 public hearing (the “March 2024 BZA Decision”), conditionally granted that portion of the March 2024 Application relating to the rear yard deck, while denying that portion of the March 2024 Application relating to the front yard impervious surface, identifying in the written findings objections to the configuration of front yard impervious surface then contemplated. The March 2024 BZA Decision is hereby incorporated into and made part of the Board’s findings for the current Application.

4. In the current Application, the Applicants and their architect have reimagined the proposed configuration of front yard impervious surface, to achieve their objectives. The Applicants seek outdoor recreational space in the front yard in a neighborhood unique to the Village in the relatively common use of front yards for recreation space, a result in part of the steep rear yards on the north side of Locust Avenue that reduce utility as outdoor recreation space. The Applicants also seek additional paved surface to accommodate cars, as the home has a one car garage, which can be occupied with items that restrict use for parking, and the current configuration does not permit two cars to be parked outside on the Subject Premises. Finally, the Applicants propose to relocate an existing walkway that was built to accommodate a front entry way that has since been relocated.

5. The Applicants considered the Board’s concerns as described in the March 2024 BZA Decision and have transformed the front yard project to include an open covered porch, as well as other modifications to the configuration of front yard impervious surface previously proposed, reducing from 52% to 43% the portion of the front yard proposed to be impervious surface. While the Board finds that 43%, when compared to the maximum permitted 30%, remains a substantial variance, the Board recognizes the Applicants’ objectives, in the context of the unique feature of the immediate neighborhood, in which front yard living space to socialize with neighbors is more common than elsewhere in the Village, and the pre-existing, non-conforming nature of the front yard (and lot) width and depth, not only for the Subject Premises but also for the immediate neighbors.

6. The Board finds that those pre-existing conditions, coupled with a one-car garage, make reasonable the Applicants’ objective of providing on-site parking for 3 cars (one in the garage, to the extent its capacity is not consumed by other items typically stored in garages of single family homes on small lots), and two on the driveway.

7. The Board recognizes that conditions on some lots in the immediate neighborhood contain excessive amounts of front yard impervious surface, whether as pre-existing, non-conforming conditions or based upon variances granted, a factor which mitigates the adverse impact of the encroachment.

8. The Board also finds that the Applicant should be able to relocate its front walkway to line up with the relocated front entry.

9. The Board notes that the substandard existing front yard requires that any extension toward the front property line requires a variance. Furthermore, while an open porch of certain dimensions is a permitted front yard encroachment under the Village Code, that provision does not apply to a property that has a substandard front yard, like the Subject

Premises. Nevertheless, the Board finds that an open porch by its nature is less intrusive, and presents significantly less bulk than does an enclosed encroachment into a front yard, a factor which mitigates the adverse impact of the encroachment. In addition, the substandard front yard is common to the homes in close proximity to the Subject Premises, also a factor which mitigates the adverse impact of the encroachment.

10. The Board finds that the variances now sought are not excessive under the circumstances, and that the Applicants and their architect have now demonstrated the absence of feasible alternatives to accomplish the objectives without need for the variances sought.

11. The Board's concerns stated in the March 2024 BZA Decision as to the creation of a 'parking lot' appearance, with minimal planting and lawn area, have been adequately addressed by the reconfigured layout, which adds green space, and which includes a detailed landscaping plan.

12. The Board recognizes that several neighbors on Locust Avenue expressed support in writing for the Application, with next door neighbor Laura Kimeldorf, 23 Locust Avenue, testifying her support for the front yard setback and impervious surface variances as proposed.

13. The Board notes that it 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, and those who will become neighbors in the future. At the same time, the Board finds that no one submitted any objections to the Application.

14. The Board finds that the difficulty confronted by the Applicants, an inability to construct the proposed alteration without obtaining the zoning variances sought, can be deemed self-imposed on the basis that they acquired the Subject Premises 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.

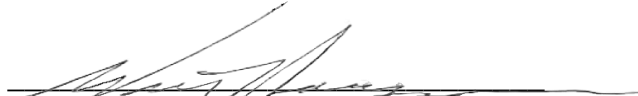
NOW, THEREFORE, based upon the foregoing findings of fact, this Board has determined that the detriment to the Applicants, if the Application is denied, outweighs any potential adverse impact upon the adjacent property owners and the community if such relief were to be granted with certain conditions, 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 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 "Proposed Exterior Work for The Molis Residence, 21 Locust Avenue, Port Washington, New York 11050," dated

“5/10/2024,” with most revision date of June 12, 2024, comprised of three sheets, drawings A-01 through A-03; prepared by Donald and Liisa Sclare Architects (the “Plans”).

2. The Plans reflect paved area adjacent to the attached one car garage, which is fenced and gated in the Plans such that same cannot be accessed by a car or similar vehicle. Said area shall not be used for the parking of any car or similar vehicle.
3. The Subject Premises shall be improved with the landscaping as set forth in the 2 page submission entitled “21 Locust Landscape Plan, included with the Application (the “Landscape Plan). All plantings required hereunder shall be planted and maintained as depicted in the Landscape Plan, and to the extent any thereof are damaged, shall be replaced and maintained, for so long as the front porch and impervious front yard area permitted hereby remains on the Subject Premises.
4. The relief hereunder is granted only to the extent specifically described in the foregoing conditions. Such relief 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 relief now granted, or (b) each condition set forth above, including, but not limited to, the Plans and Landscaping Plan referred to herein.

Board of Appeals of the Village of Baxter Estates

By:   
William Haagenson, Chairman

Date: August 28, 2024