

VILLAGE OF BAXTER ESTATES BOARD OF APPEALS

Findings of Fact and Decision
February 26, 2025 Public Hearing

(Chan and Chin Application, 5 Bayside Avenue, to Permit Installation of AC Condenser
Requiring Variance from **§175-16(F)** Required Setback)

WHEREAS, there has come before this Board the application (the “Application”) of Warren Chan and Lynn Chin (the “Applicants”), owners of 5 Bayside Avenue, Port Washington, NY, identified on Nassau County Land and Tax Map as Section 5, Block 5, Lot 36 (the “Subject Premises”), for variance from **§175-16(F)** of the Village Code, to permit a new air conditioning condenser 6 feet from nearest property line, where the minimum required setback is 12 feet; the unit is proposed to replace in the same location a pre-existing, non-conforming unit; and

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

WHEREAS, the Application for residential area variance 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 Village Clerk has confirmed for the Board that the Village has received from the Applicants the required affidavit as to the mailing of notice of the Application to neighbors within the required radius, and from the Port Washington News an affidavit of publication of said notice, and that the Application was referred 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 represented themselves at the hearing, and presented the Application.
3. The Applicants acquired the Subject Premises in 1996. In the November 12, 2024 denial notice from Village Superintendent of Buildings

Robert Barbach, RA, Mr. Barbach notes that a July 19, 2007 survey of the property signed and sealed by John P. Ferrantello, L.L.S. (the "Survey"), shows a then-existing air conditioning condenser, set back 6 feet from the westerly side property line, in the pre-existing, non-conforming side yard having a width of 9.3 feet.

4. The Board notes the Village Code requirement of a 12 foot setback for such a unit is impossible to achieve in a side yard with a width of only 9.3 feet. The Board also understands that such units must be placed a distance of several feet from the side wall of a structure, further limiting the potential alternate locations for the unit.

5. The Board notes that the Subject Premises, like most of the parcels on Bayside Avenue, is a narrow lot, with a relatively small useable rear yard, which leads homeowners to desire to place such items in side yards.

6. The existing unit being replaced has existed in the side yard at least since 2007, based upon the survey, and likely longer, as the Applicants represent that it was installed in the late 1990's, after they purchased the Subject Premises in 1996. Mr. Barbach notes that the Village files do not reflect that the existing unit was installed with a permit, and so does not appear to exist legally under the Village Code. The Applicants desire to install a new central air conditioning system in the home leads them to appear before the Board to obtain the variance required to place the unit closer than 12 feet to the side property line. The Applicants told the Board that the new unit is now situated in the contemplated location, but the installation crew has not completed the installation, pending the determination of the Board with respect to the Application.

7. The Board notes that, even though the unit appears to have been installed without a permit, that installation occurred several decades ago, and the unit has existed there for many years. The Board notes that no one, including the abutting neighbors to the west, who are most adversely impacted, appeared before the Board or submitted written or telephonic input to the Village prior to the hearing, to object to the proposed installation of a new unit in the same location as the existing unit.

8. The Applicants advised the Board, confirmed by site visits by Board members, that the abutting neighbors to the west maintain two sheds in their abutting (easterly) side yard, so that the impact of the Applicant's unit is mitigated by a 4 foot high boundary fence and sheds that abut the fence.

9. In light of the narrow lots with small back yards that predominate on Bayview Avenue, with substandard side yards, it is common for the residents of Bayview Avenue to place such units in substandard side yards. In so doing, they maximize the utility of rear yards as outdoor recreational space. The Board finds that there are no feasible alternative locations for the unit, and

the benefit of having central air conditioning in a home in the Village is clearly a reasonable benefit to seek to obtain by variance.

10. As the condition sought in the Application already is prevalent on Bayview Avenue, the grant of the variance will not change the character of the neighborhood or the community.

11. The Applicants advised the Board that one of the benefits of the new unit is that it is quieter while in operation than the old unit.

12. All of the foregoing factors serve to minimize the potential adverse impact of the variance, if granted, on the abutting neighbors.

13. Neither the unit proposed, nor the existing unit proposed to be replaced, is visible from the street in light of existing fencing; the Board also notes that sound attenuation barriers and landscaping are mandated by the Village Code for such units.

14. The Board, when considering an application for a variance that legalizes an existing condition ordinarily bases its decision upon whether 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.

15. The Board recognizes that the difficulty confronted by the Applicants, an inability to maintain and replace the unit without obtaining the zoning variance sought, appears to be self-imposed as the Applicants acquired the home when the applicable zoning restrictions were already in place, but also recognizes that the existing unit appears to have existed for several decades. In any event, the Board notes that that is merely one of the factors considered by the Board in rendering a decision on a variance application.

16. 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 the detriment to the Applicants if the Application is denied outweighs any adverse impact upon the neighbors and the community if the Application is granted, and, therefore, it is the determination of this Board that the variance application be granted upon the following conditions:

1. The installation of the replacement air conditioning unit shall be subject in all respects to the approvals of the Building Department of the Village, including the satisfactory

placement of sound attenuation panels and landscape screening, and shall be placed substantially in the same location as is the existing unit depicted in the Survey.

2. 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: _____

William Haagenson, Chairman