

BOARD OF APPEALS OF THE
VILLAGE OF BAXTER ESTATES
FINDINGS OF FACT AND DECISION

Public Hearing: November 29, 2023
Jarzombek/Randazzo Application, 2 Hilltop Road
Front Yard Variance Relating to Placement of Generator

WHEREAS, this Board has considered the application (the “Application”) of Tracey Jarzombek and Peter Randazzo, owners (the “Applicants”), with regard to the premises in a Residence A zoning district, at 2 Hilltop Road, Baxter Estates, New York, and Section 5, Block 14, Lot 1 on the Nassau County Land and Tax Map (the “Subject Premises”), for variance from **§175-16** of the Code of the Village of Baxter Estates, to permit a generator in a front yard, where generators are prohibited; 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, a SEQRA Type II action, was submitted to the Nassau County Planning Commission, which provided no input to the Board within the time allotted for its input, and so this Board may take such action regarding the Application 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 pre-existing, non-conforming irregularly shaped corner lot with both its easterly and its southerly yards fronting upon Hilltop Road, both of which are deemed front yards for Village Code purposes. Hilltop Road is a U-shaped road, with its longest portion running north/south (“Hilltop’s East Leg”), at both ends of which are short portions (“Hilltop’s North Leg,” and “Hilltop’s South Leg,” respectively). Both Hilltop’s North Leg and Hilltop’s South Leg run westerly and intersect with Overlook Drive. The portion of Overlook Drive between its intersections with Hilltop’s North Leg and Hilltop’s South Leg runs substantially parallel to Hilltop’s East Leg. In effect, a rectangle is created with the parallel short

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sides being Hilltop's North Leg and Hilltop's South Leg, and the parallel long sides being Hilltop's East Leg and the corresponding portion of Overlook.

2. The westerly property line of the Subject Premises spans the westerly side of the front yard fronting upon Hilltop's South Leg and the yard lying between the home and that property line, which is deemed a side yard for Village Code purposes. That entire westerly property line abuts wooded, undeveloped land owned by the Village that fronts on its south side upon Hilltop's South Leg, and on its west side upon Overlook Drive.
3. Therefore, with undeveloped wooded Village land sharing the westerly property line, and Hilltop Road abutting both Hilltop's South Leg and Hilltop's East Leg, the only yard of the Subject Premises that abuts a residential neighbor is the northerly side yard.
4. Both Applicants appeared at the hearing and presented the Application. No other members of the public attended the hearing.
5. In the Application, the Applicants identified the benefit sought by the Application as having effective emergency generator power to the home during power outages.
6. The Board notes that the proposed equipment would be placed in the Hilltop's South Leg front yard, along the existing driveway to the garage on the Subject Premises. The Board notes that placement in this yard, when compared to placement in any other yard, moves the generator as far as is feasible from the nearest residential neighbor.
7. Ms. Jarzombek noted that the Notice of Denial of their application for building permit for the generator, and the legal notice for the public hearing, state that the Applicants seek variances from both the prohibition on the placement of generators in front yards, and the requirement that generators be surrounded by sound attenuation panels and landscape screening. Ms. Jarzombek advised the Board that the Applicants never intended to seek relief from the sound attenuation and landscape screening requirements, and that they intend to fully comply with such requirements. Therefore, the Board deems the Application amended such that any request for relief from the sound attenuation and landscape screening requirements of Village Code **§175-16(F)(4)**, are deemed withdrawn, and this Board is not considering any such relief with respect to this Application.

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8. In response to the Chairman's concern that the proposed placement of the generator next to retaining walls servicing the driveway might serve to amplify noise from the generator, Mr. Randazzo noted that the Applicants are using additional sound muffling materials in the walls that are required. The Applicants also advised the Board that, while the Application materials identified both a Generac © and a Kohler © model, they are committed to installing the Kohler © model identified in the Application which their contractor, Castlerock Contracting, advised them is smaller and quieter, although more expensive, than the initially contemplated Generac © model.
9. Ms. Jarzombek represented to the Board that, in light of the topography of the property in the impacted front yard, the visual buffer and sound attenuation screening will not be visible from vantage points on Hilltop's South Leg, mitigating potential adverse impacts if the variance is granted. The potential adverse impact of an accessory structure in a front yard is also substantially mitigated by the small size of the equipment, when compared to other accessory structures such as sheds and garages, and the landscaping screening.
10. The proposed generator will be powered by a below-grade gas line, and will operate at a substantially lower sound level than does a portable generator.
11. The Board notes that the unique placement of the existing home and driveway on the Subject Premises eliminates other locations as feasible alternatives for the placement of the equipment.
12. The proposed location of the generator was selected by the Applicants after considering the potential impact upon abutting neighbors of all other possible locations on the Subject Premises. The location selected is in close proximity to the home. If the generator were to be placed in a side yard or the other front yard, it would necessarily be placed closer to a neighboring structure than what is proposed.
13. The Board notes that the proposed location for the generator shields the abutting residential neighbor to the north because the existing home on the Subject Premises is situated between the proposed location of the generator and that abutting residential neighbor, effectively serving as a visual and sound barrier to the generator.
14. The Board notes that any generator placed in an "as of right" location on a parcel in the Village must be at least 12' from the nearest property line. The Applicants satisfy that set-back requirement, although the nearest property line is a

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front property line. Placement in either side yard, or any closer to the Village property abutting to the west, would also require a setback variance.

15. The Board notes that the generator must be installed at the Subject Premises in accordance with the manufacturers' specifications, including minimum distance from residential structures.
16. The Board finds that the difficulties confronted by the Applicants are self-imposed, because every property owner is deemed to have knowledge of all applicable zoning restrictions on his or her property when same is acquired. Nevertheless, the self-imposed nature of difficulties sought to be addressed through area variances is but one factor for the Board to consider when weighing an area variance application and is not dispositive of the application.
17. The Board finds that the variance sought is the minimal variance required by the Applicants to provide the benefits sought, while having the least impact on the community, and the Board further finds there are no feasible alternatives to the variance needed for such purposes, that would have less of an impact on the neighbors and the community, or that would not require variances, in light of the unique configuration of the Subject Premises and the improvements thereon.
18. 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 as protecting the community at large, the current adjacent neighbors, and future neighbors, as well, the Board notes that no persons expressed any opposition to the Application.

NOW, THEREFORE, based upon the foregoing findings of fact, this Board has weighed the benefit to the Applicants, if the application is granted, against the adverse impact, if any, upon the adjacent property owners and the community and finds that the benefit to the Applicants if the application is granted outweighs any possible adverse impact upon the neighbors and the community, and, therefore, it is the determination of this Board that the variance application to permit a generator in a front yard is granted, as presented, 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 any other body having jurisdiction over said project, and, furthermore, shall be effected substantially in accordance with all of the plans submitted by the Applicants to this Board, and in accordance with placement

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specifications of Kohler ©, the manufacturer of the generator, which are included among those plans.

2. For so long as the generator is maintained in the front yard as authorized hereby, (i) periodic testing of the unit shall occur during daytime hours and as otherwise reasonably acceptable to the Village Superintendent of Buildings, and (ii) sound attenuation barriers and plantings shall be maintained in proximity to said generator, in number and size reasonably satisfactory to the Village Superintendent of Buildings, in order to serve as a sound and visual buffer from vantage points off of the Subject Premises.
3. 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.

Approved by:

Board of Appeals of the Village of Baxter Estates

By: _____
William Haagenson, Chairman

Date: _____