

VILLAGE OF BAXTER ESTATES BOARD OF APPEALS

Findings of Fact and Decision
January 24, 2024 Public Hearing

(Jarmek Application, 23 Bayside Avenue, for
Front Yard Variance for Extended Entry Portico)

WHEREAS, there has come before this Board the application (the “Application”), of Mark and Patricia Jarmek (“Applicants”), owners of premises at 23 Bayside Avenue, Port Washington, NY, Residence A zoning district, Section 5, Block 5, Lot 45 on Nassau County Land & Tax Map (the “Subject Premises”), for variances from **§175-12 and §175-15** of Code of Village of Baxter Estates, to permit a proposed one-story enclosed entry way, and proposed one-story covered front porch, which will provide a front yard of only 24 feet, where a minimum of 35 feet is required, and encroach into the front yard in excess of the 5 foot permitted encroachment into the minimum required front yard applicable to covered front porches; 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 Bayside Avenue to the north.
2. The Applicants appeared at the hearing to present their Application.
3. The Applicants advised the Board that, notwithstanding the Application as submitted, and as advertised in the Legal Notice relating thereto, the Applicants withdraw that portion of the Application that seeks variances to permit a one-story covered porch, which, if granted, would have created a front yard set-back of only 25’ (the “Open Porch Variance”). By withdrawing that part of the Application that relates to the Open Porch Variance, the Applicants seek a front yard variance with respect only to the proposed enclosed front entry extension, which if granted, will create a front yard set-back of only 28’, and that proposed encroachment

would relate only to the one-story enclosed entry way as depicted in the plans submitted as part of the Application (the “Proposed Entry Way”), having a width of 8’ and a footprint of 45.8 square feet; the existing home has a pre-existing, non-conforming front yard of approximately 32’ with respect to the existing enclosed entry way proposed to be replaced.

4. The Board accepts the Applicants’ proposal to withdraw the Enclosed Porch Variance from the Variance Application, and deems the Application amended accordingly, such that the only relief before the Board is the proposal for the Proposed Entry Way, seeking a variance to permit a front yard of only 28’ for that portion of the structure that would comprise the Proposed Entry Way.

5. The Applicants explained to the Board that the Proposed Entry Way would provide both aesthetic and functional benefits. The bland existing front entry does not provide any curb appeal, a circumstance exacerbated by the attractive entries for nearby homes. The existing front entry provides two external steps, and an internal step up from the doorway to the living room of the home. There is no closet space by the existing front entry, and no transition from entry way to living room. The proposed Entry Way will create three exterior steps so that there is no interior step up from entry area to first floor. Furthermore, closet space at the entry will be added, made possible by the expanded floor area proposed for the entry way.

6. The Village Clerk advised the Board that the Village had received no written communication in opposition to or support of the Application. No one else appeared at the hearing, or submitted any input for or against the Application.

7. The Subject Premises, like the other properties on Bayside Avenue, are unique to the Village in that it and they are predominately substandard in lot size, a pre-existing, non-conforming circumstance, and they are predominately improved with homes that are pre-existing, non-conforming structures with regard to setbacks. Therefore, it is difficult to undertake any improvements that expand the existing footprint without requiring a variance. Here, the existing front yard is substandard and so any expansion of the front of the home requires a front yard variance. Obviously, there is no feasible alternative to the relief sought, which is to improve the front entry to the home.

8. The Board finds that the benefits sought by the Applicants are understandable and appropriate, and not achievable without the variance sought, which the Board finds is not a substantial variance under the circumstances described herein.

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

10. The Board finds, in light of the features common to the Subject Premises and surrounding homes on Bayside Avenue, that any adverse impacts upon the community and the neighbors created by the proposed alterations are outweighed by the benefits to the Applicants.

11. The Board recognizes that the difficulty confronted by the Applicants, an inability to construct the proposed alteration without obtaining the zoning variance 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.

12. 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. 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 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 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 Addition for Jarmek Residence, 23 Bayside Avenue, Port Washington, New York 11050,” dated “April 2022,” comprised of two sheets, drawings T-11 and A-1, prepared by Core Group Architects, Oyster Bay, NY; provided, however, that said plans shall be revised to the satisfaction of the Village Building Official in order to delete therefrom all aspects thereof that pertain to the Open Porch Variance, which is deemed deleted from the Application, and as to which this Board grants no relief; the plans, as so revised, are hereinafter referred to as the “Amended 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 Amended Plans referred to herein.

Board of Appeals of the Village of Baxter Estates

By: _____
William Haagenson, Chairman

Date: _____