

Village of Baxter Estates Board of Appeals

FINDINGS OF FACT AND DECISION

March 27, 2024 Public Hearing

(Kelley/Hellmers Application, 20 High Street, for
Impervious Surface, Building Area and Accessory Structure Setback Variances)

WHEREAS, there has come before this Board the application (the “Application”) of Steven Kelley and William Hellmers (the “Applicants”), owners of 20 High Street, Port Washington, NY, Residence A zoning district, Section 5, Block 10, Lot 33 on Nassau County Land & Tax Map (the “Subject Premises”), for (i) variance from **§175-18.1** of Code of Village of Baxter Estates, to permit additional paved surfaces that will result in 2,534 square feet of impervious surface on a lot with 3,391 square feet of lot area (or 79.2%), where maximum permitted impervious surface is 45% of lot area, or 1,525.95 square feet, and where the existing condition is 2,149 square feet, or 67.2% of lot area, (ii) variance from **§175-10** of Code, to permit building area of 899 square feet, or 26.5% of lot area, where maximum permitted building area is 25% of lot area, or 847.75 square feet, and (iii) variance from **§175-17.E.** of Code, to permit erection and maintenance of a shed (an accessory structure), in a rear yard, where same fails to satisfy the restrictions on accessory structures in rear yards set forth in clauses “A.” through “D.” of **§175-17**, which include a setback of 3 feet from the side property line; 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 seeks residential area variances, a Type II action for purposes of the New York State Environmental Quality Review Act (“SEQRA”), and was referred 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, and 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 on High Street, a dead-end residential street. The Subject Premises are the last residential parcel at the north end of High Street on its westerly side. The Subject Premises front on High Street to the east, and abut Nassau County parkland to the north.

2. The Subject Premises abut on its westerly (rear) side the rear yard of a residential property that fronts upon Columbia Place. The Subject Premises abut on its southerly

side a narrow triangular sliver of property, widening from its easterly most point fronting upon High Street to several feet in width at the westerly end thereof (the “Abutting Sliver”). The Abutting Sliver appears to be a ‘gore,’ or a portion of real property as to which record ownership is unclear and which may have been created through imprecise demarcation of property lines when the neighborhood initially was laid out by surveyors. The Abutting Sliver abuts a parcel improved with a single family home, known as 18 High Street, currently owned by Ms. Lynn Pinkham.

3. The Applicants appeared at the hearing with their architect, Timothy Lambert, R.A., and their attorney, Christine Hogan, Esq..

4. The existing residence at the Subject Premises, like the other homes on High Street, is a pre-existing, non-conforming structure on a pre-existing, non-conforming lot. Even so, the Subject Premises are unusually substandard as compared to the neighboring parcels.

5. The Subject Premises are uniquely configured, sitting at a high elevation in relation to the County parkland to the north, and to the properties to the west, between it and Manhasset Bay. The topography provides views of Manhasset Bay from the Subject Premises, and of the County Park to the north. The Subject Premises and improvements thereon are clearly visible from vantage points below in the County Park. A dense canopy of trees surrounding the Subject Premises, including those in the Park, create a woodland appearance for the Subject Premises which blocks sunlight therefrom, making it impractical to grow plantings at grade, or lawn or other ground cover.

6. The unique features of the Subject Premises include elevation that drops from front to rear, and also from south side to north side, a narrowing of the parcel to a width of only 17 feet at the west (rear) property line, and the absence of a garage, or any feasible space for a garage.

7. The Application seeks variances to permit a shed in the rear yard just 6 inches from the southerly property line, where a minimum of 3 feet is required. Currently, the shed exists, partially upon the Abutting Sliver. Applicants’ counsel suggested that the shed at one point was situated at least partially upon the Pinkham parcel south of the Abutting Sliver. The Applicants did not claim to the Board that they own any interest in the Abutting Sliver, and the Board notes that its jurisdiction extends only to the Subject Premises.

8. The Applicants propose to contain the shed entirely upon the Subject Premises, in order to have storage for items needed for property maintenance and outdoor living but not customarily stored inside habitable space. The absence of a garage makes this need reasonable. The narrow rear yard makes any alternative location not feasible. The shift in elevation from front to rear makes the shed in the proposed location hardly visible from the street.

9. The Village Clerk reported on a phone call between Ms. Pinkham and the Deputy Village Clerk on the day of the hearing, in which Ms. Pinkham expressed no opposition to the Application so long as the shed is located entirely within the Subject Premises’ rear yard.

A letter from counsel to Ms. Pinkham was read into the record, which, while not entirely clear, was construed by the Board as consistent with Ms. Pinkham's position.

10. The Application seeks variances to permit building area of 899 square feet, or 51.25 square feet in excess of the maximum permitted amount. The shed is 96 square feet, and so is the reason for the building area variance. Due to the unique features of the Subject Premises, the Board finds the proposed building area variance to be reasonable.

11. Finally, the Application seeks a variance to permit 2,534 square feet of impervious surface on a lot with 3,391 square feet of lot area (or 79.2%), where maximum permitted impervious surface is 45% of lot area, or 1,525.95 square feet, and where the existing condition is 2,149 square feet, or 67.2% of lot area. So, the existing condition already greatly exceeds the allowable impervious surface. The Applicants propose an additional 385 square feet of impervious surface, of which the shed represents 96 square feet, so that proposed walkways and retaining walls would introduce 289 square feet.

12. The Applicants and their architect explained the need to transition existing wooden walkway on the northerly side of the home abutting the parkland, in order to shift to durable materials and accommodate a much needed replacement of a decaying retaining wall holding the Subject Premises from falling down into the County Park.

13. The Subject Premises are a unique and difficult lot on which to undertake improvements. The Board notes that its configuration prevents any one from having a view of the proposed impervious surface along the northerly side property line, except for portions thereof in the front yard.

14. The Board notes the representations by the Applicants and their representatives that the pavers being used are themselves permeable and to be set in gravel, thereby permitting storm water to percolate into the ground. Nevertheless, the Board notes, as the Applicants acknowledged, that the Village Code treats such materials as impervious surface, and so the variance sought is required notwithstanding any features of the materials identified by the Applicants.

15. The pre-existing, non-conforming home and lot are significantly smaller in size than most lots and homes in the Village and surrounding communities.

16. The Board members find that the Applicants' desire for more stable and durable walking areas and some outdoor storage space, and need to stabilize the northerly boundary of the property, on a lot on which ground vegetation would be a challenge to maintain warrants the relief sought. The Board finds that there is no feasible alternative location on the Subject Premises to add the shed or the retaining wall, walkways and associated impervious surface than as proposed by the Applicant, in light of the narrow lot, and the minimal useable areas, and in light of property elevations.

17. 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, and high above the County

Park below to the north, minimizes the adverse impacts that might arise from such variances 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 circumstance 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.

18. The Board finds that the project was designed in order to minimize the variances sought while obtaining the benefits that the homeowners require, thereby helping to minimize the potential adverse impact on the neighbors and the community.

19. The Board finds that there is need to upgrade the property to address the difficulties that the Applicants are experiencing in light of the unique location and circumstances of the Subject Premises. The finds the proposed alterations reasonable and appropriate under the circumstances described herein.

20. The architect advised the Board that there are no alternatives to the variances sought, as the existing structure and lot size and dimensions drives the design and limits alternatives.

21. The Board finds that the variances sought will enable the Applicants to create a residence that is aesthetically pleasing and consistent with the community, and are 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 variances sought that would enable the Applicants to obtain the benefits that they seek.

22. 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.

23. 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 applicant, 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 applicant 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 variance 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 Shed, Retaining Walls and Permeable Pavers, at the Kelley Residence, 20 High Street, Port Washington, NY 11050,” dated “29 November 2023,” by Wellkraft Architecture, 3012 Fortesque Ave., Oceanside, New York 11572, comprised of two sheets, drawings A-1 and A-2, signed and sealed by Timothy Lambert, R.A. (the “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 Plans referred to herein.

Board of Appeals of the Village of Baxter Estates

By: _____
William Haagenon, Chairman

Date: _____