

VILLAGE OF BAXTER ESTATES BOARD OF APPEALS

Findings of Fact and Decision
May 27, 2026 Public Hearing

(Wilbur and Meyer Application, 38 Locust 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 Cory Wilbur and Scott Meyer (the “Applicants”), owners of 38 Locust Avenue, Port Washington, NY, identified on Nassau County Land and Tax Map as Section 5, Block 33, Lot 318 (the “Subject Premises”), for variance from §175-16(F) of the Village Code, to permit a new air conditioning condenser unit 6.97 feet from nearest property line, where the minimum required setback is 12 feet; 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 advised the Village that it has no input to provide, 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 Locust Avenue,
2. Ms. Wilbur represented the Applicants at the hearing, and presented the Application.
3. The Subject Premises are a pre-existing, non-conforming lot, with lot width of only 40 feet, containing a pre-existing non-conforming single

family home. The pre-existing, non-conforming easterly side yard into which the Applicants propose to place the condenser for their new combined heating and cooling unit is only 8.8 feet wide, while the westerly side yard is 12.9 feet wide.

4. The benefit sought by the Applicant is to replace several portable air conditioners installed in windows or inserted into walls with a single central unit that provides both heating and cooling, an amenity that is common in homes in the neighborhood and surrounding community. The removal of multiple units from windows and protruding through exterior walls is beneficial to the neighbors insofar as eyesores are eliminated.

5. The Board understands that neither side yard is wide enough to enable installation of the condenser in a compliant location, and that the westerly side yard would require a smaller variance than placement as proposed. However, the westerly side yard contains the driveway for the detached rear yard garage, and so is not a feasible location for the condenser. 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.

6. The Board notes that the Subject Premises, like most of the parcels on Locust Avenue, is a narrow lot, with a relatively small useable rear yard, which leads homeowners to desire to place such items in side yards in order to maximize the utility of rear yards as outdoor recreational space.

7. The Board finds that the rear yard is not a feasible alternative location for the condenser for several reasons. The driveway crosses the rear yard from the westerly side of the lot to the detached garage on the easterly side of the lot. The driveway contains a drainage system in the middle of the rear yard to contain stormwater. Placement in the rear yard in a compliant location would interfere with the active area of the garage, both for the driveway and as outdoor living space.

8. The Board notes that no one appeared before the Board or submitted written or telephonic input to the Village prior to the hearing, objecting to the proposed installation of a new unit in the same location as the existing unit.

9. In fact, the Applicant stated, and the Village Clerk confirmed, that both abutting neighbors, including Stuart Rosen of 42 Locust Avenue, the abutting neighbor to the east, who would be most adversely impacted by the proposed variance, provided to the village by email written support for the application.

10. The Board finds that the benefit of central air conditioning in a home in the Village is clearly a reasonable benefit to pursue by variance.

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

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

13. The unit proposed is visible from the street; the Board also notes that sound attenuation barriers and landscaping are mandated by the Village Code for such units.

14. The Board recognizes that the difficulty confronted by the Applicants, an inability to place the unit as proposed without obtaining the zoning variance sought, is deemed self-imposed as the Applicants acquired the home when the applicable zoning restrictions were already in place. 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.

15. 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, this Board determines that the variance application be granted upon the following conditions:

1. The installation of the 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 depicted in the Application submission.

2. The variance is 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