

Local Law 3 of 2007 (Adopted April 4, 2007)

A local law extending and amending a temporary moratorium on all construction, building permits, and the processing of applications with regard to any parcel of real property within the Village of Baxter Estates, improved or proposed to be improved with residential building or buildings which will result in floor area that exceeds 36% of lot area, for parcels not greater than 8,500 square feet, floor area that exceeds 3,080 square feet for parcels between 8,500 and 9,935 square feet, or floor area that exceeds lesser of (a) 31% of lot area or (b) the greater of 3,080 square feet or 110% of existing floor area, for parcels greater than 9,935 square feet, or which will result in such buildings, or any portion thereof, having a height in excess of 30' to the highest ridge of the roof or to the highest point of any flat roof.

Section 1. Legislative Findings and Intent.

A. On July 6, 2006, this Board adopted Local Law 2 of 2006, imposing a temporary moratorium on all construction, building permits, and the processing of applications with regard to any parcel of real property within the Village of Baxter Estates, improved or proposed to be improved with a residential building or buildings which will result in such buildings having a floor area in excess of 36% of lot area, for parcels not greater than 8,500 square feet, or 31% of lot area for parcels greater than 8,500 square feet, or, with respect to existing buildings, having a floor area that exceeds by at least 10% the floor area of the building prior to the extension or alteration thereof, or which will result in such buildings, or any portion thereof, having a height in excess of 30' to the highest ridge of the roof or to the highest point of any flat roof within the Village, for a period of approximately nine months, while this Board performed an investigation to determine whether any changes in the present zoning regulations are needed to protect the unique character of the Village, and to enact any needed amendments to the Village's zoning regulations. In so doing, this Board stated that:

i. The Board of Trustees recognizes the unique character of the Village of Baxter Estates, which is created in substantial part by the numerous trees within the

Village and the size, design and bulk of the existing residential buildings, which, generally, do not overwhelm the residential properties upon which they are located, or the properties or streets upon which they abut. That unique character is an essential part of the common plan and scheme of the Village and a valuable right which all of the Village residents share.

ii. This Board is aware of the trend on Long Island, and especially along the north shore of Nassau County, for developers and some homeowners to build larger and larger homes, often close to or at the maximum extent permitted under the Zoning Ordinances of the municipality, and well in excess of the size of most of the dwellings presently existing in the Village. This Board believes that, if that trend encroaches into the Village, then the unique character of the Village will be materially adversely impacted.

iii. This Board believes that a substantial majority of the residential properties within the Village have buildings with floor areas that are less than 36% of lot area, for parcels that have lot areas not greater than 8,500 square feet, and that are less than 31% of lot area for parcels that have lot areas greater than 8,500 square feet. This Board also believes that residential properties with buildings with floor areas in such proportions to their lot areas can adequately afford all of the requisite living space for a modern family's needs within the Village. While this Board recognizes that some residential properties may have a higher market value if they are improved with buildings with floor areas that exceed the ratios to lot area described above, this Board also believes that in the event that residential properties with buildings with floor areas in excess of such ratios are permitted, they will have a substantial adverse impact upon the character of the Village and, if not immediately, eventually, the property values of the existing homes within the Village will be depreciated.

iv. This Board further believes that the height of buildings located within the residential zoning districts of the Village can adversely impact the community if such heights are permitted by the Zoning Code as presently formulated, in light of the significant differences in topography and elevation prevalent in the Village. This Board believes that an analysis and modification of existing Zoning Code restrictions relating to height should be undertaken, taking into account, among other things, the impact and computation of height under our Zoning Code in relation to topography and elevation, in order to minimize the adverse impact of structures looming above neighboring properties and

structures due to calculations of height under the Code that fail to take into account the hilly terrain in the Village.

- v. In order to allow this Board time to investigate its belief and to determine whether any changes in the present zoning regulations are needed to protect the unique character of the Village, from the construction of new buildings or the alteration of existing buildings which will result in residential properties with buildings with floor areas that exceed 36% of lot area for parcels that have lot areas not greater than 8,500 square feet, and buildings with floor areas that exceed 31% of lot area for parcels that have lots greater than 8,500 square feet, and building heights that exceed 30' from grade to the highest ridge of the roof, or the highest point of any flat roof, and to enact any needed amendments to the Village's zoning regulations, this Board has determined to enact a moratorium of approximately nine months: (1) on all new construction which would result in the floor area of the buildings on a residential property within the Village of Baxter Estates exceeding 36% of lot area for parcels having lot areas not greater than 8,500 square feet, and 31% of lot areas for parcels having lot areas greater than 8,500 square feet, or exceeding by more than 10% the floor area of the existing building immediately prior to the proposed expansion or alteration, or which would create any structure, or portion of a structure having a height in excess of 30 feet from grade to the highest ridge on the roof, or to the highest point of a flat roof; (2) on the issuance of building permits for projects which would result in the floor area of the buildings on a residential property within the Village of Baxter Estates exceeding 36% of lot area for parcels having lot areas not greater than 8,500 square feet, and 31% of lot areas for parcels having lot areas greater than 8,500 square feet, or exceeding by more than 10% the floor area of the existing building immediately prior to the proposed expansion or alteration, or which would create any structure, or portion of a structure having a height in excess of 30 feet from grade to the highest ridge on the roof, or to the highest point of a flat roof; (3) on the processing of all applications to the Village, with regard to the construction of any new building or any alteration to any existing building which would result in the floor area of the buildings on a residential property within the Village of Baxter Estates exceeding 36% of lot area for parcels having lot areas not greater than 8,500 square feet, and 31% of lot areas for parcels having lot areas greater than 8,500 square feet, or exceeding by more than 10% the floor area of the existing building immediately prior to the proposed expansion or alteration, or which would create any structure, or portion of a structure

having a height in excess of 30 feet from grade to the highest ridge on the roof, or to the highest point of a flat roof.

- B. Since that time, the Board members have reviewed the existing housing stock in the Village, and the existing zoning of the Village, with regard to its impact on the creation of large structures that might adversely impact the Village. At its monthly meetings since adoption of Local Law No. 2 of 2006, the Board has discussed its ongoing review of existing homes in the Village, the sizes of such structures and the lots upon which they are situated, and the zoning code provisions of the Village in relation to them, to ascertain whether modifications to the zoning code would be beneficial to the Village and its residents for the purposes described above. The Board members and Village staff have collected information from various sources, including the Nassau County Department of Assessment web site, which it has compiled and reviewed. In considering such information with consultants to the Village assisting the Village with electronic record-keeping, the Village has been advised that a significant portion of the data obtained from the Nassau County Department of Assessment may be inaccurate or imprecise. In analyzing that data against Village records, and against information obtained through site visits by Village personnel, the Board has learned that there may be material deficiencies between, for example, actual set-backs on properties and those indicated in some of the data compiled. The Board finds that additional time is necessary for the Board to analyze the information that it has received and considered, identify deficiencies in that data to account for same, and to develop legislation to address the concerns raised in the original moratorium. In order to assure that this Board has the necessary time to analyze the information and, if necessary, amend and adopt legislation amending the Village's zoning code, the moratorium presently scheduled to expire on April 9, 2007 must be extended.
- C. The Board notes that applications for relief under the original moratorium local law have been made to the Village Zoning Board of Appeals, and, in certain circumstances, relief has been granted. The Board finds that the restriction in Local Law 2 of 2006 prohibiting alterations to existing residences if the alteration would result in the floor area of buildings on residential property exceeding by more than 10% the floor area of the existing building immediately prior to the proposed expansion or alteration, may be unduly restrictive. The Board finds that the adverse consequences sought to be addressed by the moratorium are not implicated if the resulting floor area does not exceed 36% of lot area for

lots not greater than 8,500 square feet, or certain other caps applicable to larger lots, even though the project may call for an increase in floor area greater than 10%. Furthermore, under such expanded thresholds for exemption from the moratorium, a property owner planning construction or an expansion that does not exceed those more lenient thresholds need not apply to the Village Zoning Board for relief from the moratorium. However, nothing in the local law exempts any project from the need to satisfy all Village Zoning code provisions. The Board finds that it is in the best interests of the Village and its residents to liberalize the exemptions from the moratorium in extending the moratorium.

D. Accordingly, in order to allow this Board time to complete its investigation and adopt the necessary legislation to protect the unique character of the Village, this Board has determined that it is necessary to extend the existing moratorium for a period of approximately six (6) months on:

(1) all new residential construction within the Village which would result in either:

(a) a structure, or portion of a structure, with height in excess of 30 feet from grade to the highest ridge on the roof, or to the highest point of a flat roof; or

(b) total floor area that exceeds 36% of the lot area, where lot area is equal to or less than 8,500 square feet; or

(c) total floor area that exceeds 3,080 square feet, where lot area is greater than 8,500 square feet but less than 9,935 square feet; or

(d) total floor area, where lot area is equal to or greater than 9,935 square feet, that exceeds the lesser of (i) 31% of the lot area, or (ii) the greater of 3,080 square feet or 110% of the existing floor area; and

(2) the issuance of building permits for projects which would result in either:

(a) a structure, or portion of a structure, with height in excess of 30 feet from grade to the highest ridge on the roof, or to the highest point of a flat roof; or

(b) total floor area that exceeds 36% of the lot area, where lot area is equal to or less than 8,500 square feet; or

(c) total floor area that exceeds 3,080 square feet, where lot area is greater than 8,500 square feet but less than 9,935 square feet; or

(d) total floor area, where lot area is equal to or greater than 9,935 square feet, that exceeds the lesser of (i) 31% of the lot area, or (ii) the greater of 3,080 square feet or 110% of the existing floor area; and

(3) the processing of all applications to the Village, with regard to the construction of any new building or any alteration to any existing building which would result in either:

(a) a structure, or portion of a structure, with height in excess of 30 feet from grade to the highest ridge on the roof, or to the highest point of a flat roof; or

(b) total floor area that exceeds 36% of the lot area, where lot area is equal to or less than 8,500 square feet; or

(c) total floor area that exceeds 3,080 square feet, where lot area is greater than 8,500 square feet but less than 9,935 square feet; or

(d) total floor area, where lot area is equal to or greater than 9,935 square feet, that exceeds the lesser of (i) 31% of the lot area, or (ii) the greater of 3,080 square feet or 110% of the existing floor area.

Section 2. Scope of Moratorium.

A. For purposes of this Local Law, “residential lot” shall mean each lot in the Village that is zoned as a single family building lot; “floor area” and “lot area” shall have the meanings given to such terms pursuant to Section 175-92 of the Code of the Village of Baxter Estates; and “existing floor area” shall mean the amount of floor area on any residential lot as of the effective date of this local law.

B. Except as provided in Section 3 of this Local Law, during the period from and after the effective date of this Local Law until October 22, 2007:

1. No person shall construct any new building or any alteration to any existing building which would result in either:

(a) a structure, or portion of a structure, with height in excess of 30 feet from grade to the highest ridge on the roof, or to the highest point of a flat roof; or

(b) total floor area that exceeds 36% of the lot area, where lot area is equal to or less than 8,500 square feet; or

(c) total floor area that exceeds 3,080 square feet, where lot area is greater than 8,500 square feet but less than 9,935 square feet; or

(d) total floor area, where lot area is equal to or greater than 9,935 square feet, that exceeds the lesser of (i) 31% of the lot area, or (ii) the greater of 3,080 square feet or 110% of the existing floor area.

2. No building permits shall be issued for the construction of any new building or any alteration to any existing building which would result in either:

(a) a structure, or portion of a structure, with height in excess of 30 feet from grade to the highest ridge on the roof, or to the highest point of a flat roof; or

(b) total floor area that exceeds 36% of the lot area, where lot area is equal to or less than 8,500 square feet; or

(c) total floor area that exceeds 3,080 square feet, where lot area is greater than 8,500 square feet but less than 9,935 square feet; or

(d) total floor area, where lot area is equal to or greater than 9,935 square feet, that exceeds the lesser of (i) 31% of the lot area, or (ii) the greater of 3,080 square feet or 110% of the existing floor area.

3. No application shall be processed by the Village for the construction of any new building or any alteration to any existing building which would result in either:

(a) a structure, or portion of a structure, having a height in excess of 30 feet from grade to the highest ridge on the roof, or to the highest point of a flat roof; or

(b) total floor area that exceeds 36% of the lot area, where lot area is equal to or less than 8,500 square feet; or

(c) total floor area that exceeds 3,080 square feet, where lot area is greater than 8,500 square feet but less than 9,935 square feet; or

(d) total floor area, where lot area is equal to or greater than 9,935 square feet, that exceeds the lesser of (i) 31% of the lot area, or (ii) the greater of 3,080 square feet or 110% of the existing floor area.

C. Nothing in this Local Law is intended or shall be deemed to exempt any residential lot in the Village, or any construction or alteration of any new or existing building or structure, from complying with all provisions of the Code of the Village of Baxter Estates, including, without limitation, the zoning provisions thereof.

Section 3. Exceptions.

This moratorium shall not apply to the processing of applications, the issuance of building permits, or construction which involves a new building or the repair, replacement, or maintenance of all or any part of an existing building that would not result in any of the following:

(a) a structure, or portion of a structure, with height in excess of 30 feet from grade to the highest ridge on the roof, or to the highest point of a flat roof; or

(b) total floor area that exceeds 36% of the lot area, where lot area is equal to or less than 8,500 square feet; or

(c) total floor area that exceeds 3,080 square feet, where lot area is greater than 8,500 square feet but less than 9,935 square feet; or

(d) total floor area, where lot area is equal to or greater than 9,935 square feet, that exceeds the lesser of (i) 31% of the lot area, or (ii) the greater of 3,080 square feet or 110% of the existing floor area.

Section 4. Variances.

In the event of unnecessary hardship, an application for relief from this local law may be made to the Village's Zoning Board of Appeals, which shall consider any such application under the standards applicable to an application for a "use variance" pursuant to the provisions of Village Law §7-712-b(2) for a "use variance"; provided, however, that the Village's Zoning Board of Appeals shall disregard such portions of those standards to the extent not deemed applicable by the Village's Zoning Board of Appeals to an application for relief hereunder.

Section 5. Effective Date.

This local law shall take effect immediately.