

Local Law Filing

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Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County
City
~~Town~~ of Baxter Estates
Village

Local Law 3 of the year 2022

(Insert Title)

A local law amending § 147-1, of Chapter 147, "Site Plan Approval," and Article IV, "Business A Districts," of Chapter 175, "Zoning," of the Village Code, to require special exception permits and site plan and façade review process for certain development and uses of parcels within Business A District of the Village of Baxter Estates, and terminating pending Building Moratorium.

Be it enacted by the Board of Trustees of the
(Name of Legislative Body)

County
City
~~Town~~ of Baxter Estates
Village

Section 1. Legislative Findings and Intent. The Board of Trustees (the "Board") of the Village of Baxter Estates (the "Village"), has previously enacted, and subsequently extended, a building moratorium (the "Moratorium"), with respect to development of properties in the Village's Business A Zoning District, to consider means by which parcels of real property in the Business A District can be developed for multi-residential use, in a manner that furthers the health, safety and welfare of the Village. The Board has retained land use and planning consultants Nelson, Pope Voorhis ("Consultant"), to assist

the Village in its review. The Board finds that certain recommendations by Consultant will further the interests of the Village, providing Village oversight and input on such development by elected or appointed Village officials, through special exception permit, site plan review and façade review processes.

In addition, current Code restrictions with respect to setbacks and parking will require that almost any development or alteration in the Business A District that involves a change of building footprint will require a zoning variance, with most existing structures being pre-existing, non-conforming structures. The Board finds that amendments to certain of the zoning area restrictions will reduce the need for zoning variances where same are not needed in light of other appropriate controls over development, including as contemplated hereunder. The Moratorium is now in effect through December 31, 2022. The Board desires to enact legislation to address the recommendations of the Consultant, in the manner herein provided, and to terminate the Moratorium effective immediately upon the enactment hereof.

Section 2. § 147-1, of Chapter 147, “Site Plan Approval,” of the Code of the Village of Baxter Estates, is hereby amended to include at the end thereof, new clauses “(7)” and “(8)”, to read in their entirety as follows:

“(7) All uses subject to the special exception permit provisions of § 175-38, or the conditional use permit provisions of § 175-39; (8) All structures or uses that abut a residential district and that are required to provide more than 15 parking spaces.”

Section 3. Article IV, “Business A Districts,” of Chapter 175, “Zoning,” of the Code of the Village of Baxter Estates, is hereby amended to read in its entirety as follows:

“Article IV
Business A Districts

§ 175-37 Applicability.

The provisions of this article shall apply to a Business A District.

§ 175-38 Permitted uses.

A. A building may be erected, altered or used, and a lot or premises may be used for any purposes set forth in this section and for no other.

(1) Hotels, offices, financial institutions, theaters, and restaurants, as defined in § 175-92, but excluding fast-food restaurants, as defined in § 175-92.

- (2) Retail stores, except those listed in § 175-39A.
- (3) Sale or repair of jewelry, watches, clocks or optical goods, musical, professional or scientific instruments.
- (4) Shops for personal service.
- (5) Hand laundry, custom tailoring, hand dressmaking, millinery, shoemaking and repairing.
- (6) Employment offices.
- (7) Greenhouses; flower shops.
- (8) Shops for carpenters, hand cabinetmaking, furniture repair or upholstery, electrical work, hand metal working, blacksmith, tinsmith, new and unused plumbing, gas, steam or hot water fittings, bicycle repair.
- (9) A multiple dwelling subject to special exception provisions under § 175-38.B.
- (10) Combined commercial and residence buildings subject to special exception provisions under § 175-38.B..
- (11) A regularly organized institution of learning approved by the State Board of Regents and supported by public funds.
- (12) A public library, public art gallery, public museum, municipal or volunteer firehouse, municipal park for recreational use, railway passenger station.
- (13) A church or other building used for religious purposes.
- (14) A parish house; parochial school; private school.
- (15) Philanthropic or eleemosynary uses or institutions other than correctional institutions.
- (16) Hospitals or sanatoriums, except those prohibited under Article VII, § 175-72.
- (17) Nursing homes licensed by the Nassau County Department of Health.
- (18) A clubhouse, fraternity house, lodge or other recreational area of building.
- (19) A telephone exchange.

- (20) Public utilities.
- (21) Government or municipal buildings, regardless of whether said buildings are erected for the purpose of discharging governmental or corporate functions.
- (22) Signs as permitted in Article VI, §§ 175-58E, and 175-60B, inclusive.
- (23) Accessory buildings or uses on the same lot with and customarily incidental to any of the above permitted uses.

B. Special Exception Criteria. The Board of Trustees is hereby authorized to review and approve, approve with modifications or disapprove special exception permits pursuant to this Chapter. The Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to combined commercial and residence buildings, and multiple dwellings, and the protection of the health, safety, and welfare of the Village. All combined commercial and residence buildings and multiple dwellings must comply with the following criteria:

- (1) Facade review (see § 175-51) and site plan review (see Chapter 147) by the Board of Trustees for the proposed construction of any new multiple dwellings or modifications to an existing building for use as a combined commercial and residence building in the Business A District. The exterior design and placement of buildings shall protect and enhance the established character of the Village. All exterior building materials shall be aesthetically appropriate and of high quality as determined by the Board of Trustees.
- (2) Minimum lot area of 1,000 square feet per multiple dwelling unit.
- (3) Unit size: The minimum floor area for any such residential multiple dwelling unit shall be 800 square feet for a studio apartment; 900 square feet for a one-bedroom apartment; 1,100 square feet for a two-bedroom apartment; and 1,250 square feet for a three-bedroom apartment.
- (4) No multiple dwelling unit shall be located below the street-level floor of any building;
- (5) No commercial or business use shall be permitted in a building on a floor higher than that which contains a residential apartment;
- (6) The Board of Trustees shall make an affirmative determination that, notwithstanding the combined commercial and residence uses of a building

containing residential apartments, it is feasible to establish and impose suitable and necessary conditions for garbage pickup, security services, fire egress, emergency access, light, maintenance services, superintendent availability and other similar matters affecting the safety and quality of life of the occupants of the residential apartments, and shall establish and impose such conditions in connection with approving any permit;

(7) The Board of Trustees shall make an affirmative determination that, in connection with constructing those portions of a combined commercial and residence building that will contain residential apartments, it is feasible to establish and impose suitable and necessary conditions (including setbacks) that will protect and safeguard the existing fire egress, light, window views and accessibility of emergency services of neighboring structures, and shall establish and impose such conditions in connection with approving any permit;

(8) The multiple dwelling unit is not to be used as a dormitory or for transient occupancy. For purposes hereof, transient occupancy means occupancy for a period of less than twelve consecutive months.

C. Buildings and uses provided in Subsection **A(13)** to **(23)**, inclusive, and Subsection **A(25)** shall conform to the provisions of Article **III** as to height, plot area, building area and open spaces.

D The foregoing permitted uses are intended to be limited to shops and stores for the sale at retail of consumer merchandise and service where the transaction with the customer and the operation of the business are conducted entirely within a building.

E The permitted uses hereinabove set forth shall not include or permit any of the following uses, either as ancillary to such permitted uses or otherwise:

(1) Drive-in establishments;

(2) Shops or stores which make available any facility for, or permit the consumption of, food or beverages on the premises but outside a building;

(3) Open-front shops or stores;

(4) The outdoor display or storage of merchandise; and

(5) Fast-food restaurants as defined in § 175-92.

§ 175-39 **Conditional uses.**

A building may be erected, altered or used, and a lot or premises may be used for any of the purposes set forth in this section when authorized by the Board of Appeals pursuant to the provisions of Article IX, § 175-87A(1), and for no other:

- A. Retail store for the storage, sale or distribution of ice, wood, used lumber, used household equipment or materials, used automotive parts, equipment or supplies, or motor vehicles.
- B. Automobile service station, public garage, automobile repair shop, subject to the provisions of Article VII, § 175-73..
- C. Parking space for the parking, storage and sale of automobiles.
- D. Commercial parking lot.
- E. Any use of the same general character as any of the uses hereinbefore specifically permitted.

§ 175-40 **Incidental uses.**

- A. In connection with any of the aforesaid permitted uses, incidental uses, as set forth in this section are hereby permitted.
 - (1) Manufacture or treatment of products clearly incidental to the operation of a retail business conducted on the premises or the performing of a service primarily for residents of the neighborhood on a scale requiring not more than five operators engaged on such work and to an extent involving for such work not more than the rear three-quarters of the entire first-floor space of the building.
- B. No such permitted use shall be operated to the extent of an industry, nor shall two or more permitted uses be combined so as in fact to create an industry.

§ 175-41 **Building height.**

- A. No commercial building, except a church, shall exceed three stories, with maximum height of 40 feet.
- B. No building used partly for commercial and partly for residential purposes shall exceed 3 stories, with a maximum height of 40 feet.

§ 175-42 **Building area.**

- A. In the case of any building erected, altered or used wholly for commercial purposes, the building area shall not exceed 70% of the lot area.
- B. In the case of any building erected, altered or used for multiple dwellings or in part for residence purposes and in part for commercial purposes, the total coverage for buildings and structures shall not exceed 65% of the lot area.
- C. In any event, provision shall be made for off-street parking and off-street loading and unloading as required under §§ 175-46 and 175-47.

§ 175-43 **Front yards.**

- A. Unless the main building on the lot is controlled by Subsection C, there shall be a front yard, the depth of which shall be not less than 10 feet.
- B. On a corner lot a front yard shall be required on each street, and unless the main building is controlled by Subsection C, each such front yard shall be not less than 10 feet.
- C. The minimum front yard depth shall be the same as the average front yard depth of the existing buildings within 200 feet on each side of the plot and within the same block-front and district. No front yard for commercial buildings, combined commercial and residence buildings and multiple dwellings shall be required to have a depth greater than 15 feet. The minimum front yard for buildings used solely as multiple dwellings shall be 10 feet.

§ 175-44 **Side yards.**

- A. No side yard shall be required for buildings used wholly for commercial purposes, except as required in § 175-47 .
- B. Where a building is used or intended to be used partly for commercial and partly for residence purposes, there shall be two side yards, each of which shall be not less than five feet in width.
- C. Where two buildings, used or intended to be used partly for commercial and partly for residence purposes, are joined by a party wall, there shall be two side yards, each of which shall be not less than 10 feet in width.
- D. Where a building is erected or a use maintained on a lot abutting a residence district, a minimum side and/or rear yard of 25 feet abutting said district will be required.

- E. Side yards in subsections B, C and D for combined commercial and residence buildings and multiple dwellings may be reduced by the Board of Trustees based upon consideration of compatibility of adjacent buildings and structures, current setbacks of existing buildings in the area, vehicle and pedestrian access, visual access, lighting, drainage and utilities, public safety, and whether reduced setbacks would fulfill the intent and purpose of this article.

§ 175-45 **Rear yards.**

There shall be a rear yard, the depth of which shall be not less than 20 feet.

§ 175-46 **Off-street parking.**

Unless otherwise provided in an adjoining parking district, provisions shall be made for the parking of vehicles as follows:

- A. Off-street parking spaces shall be provided in accordance with the following minimum number:

Use	Required Number of Spaces
Library, museum, art or historical building, school	1 per 4 seats or persons who can be legally accommodated
Post office, recreation area or building, utility company office, and water pumping station	1 per 300 square feet of floor area
Semi-public uses operated and maintained by a nonprofit organization	1 per 4 seats or persons who can be legally accommodated
Retail purposes	5, plus 1 per 300 square feet of floor area in excess of 2,000 square feet of floor area
Office building, medical center, financial institution, bank, professional or business offices	1 per 200 square feet of floor area
All other service establishments	5, plus 1 per 300 square feet of floor area in excess of 2,000 square feet of floor area
Commercial-recreational uses	1 per 4 seats or persons who can be legally accommodated
Industrial uses	5, plus 1 per 300 square feet of floor area in excess of 2,000 square feet of floor area
Repair shops	5, plus 1 per 300 square feet of floor area in excess of 3,000 square feet of floor area

Use	Required Number of Spaces
Hotel, motel, restaurant	1 per room, plus 1 per 4 seats or persons who can be legally accommodated, plus 1 per employee
Hospital, nursing home	1 per bed, plus 1 per employee
Medical or dental clinic	1 per 200 square feet of floor area
Telephone exchange	1 per 200 square feet of building area
Research laboratory	1 per 300 square feet of floor area
Animal hospital, automobile show rooms, gasoline service stations radio and TV studios	1 per 250 square feet of floor area
All other uses	Same requirements as for use which Board of Trustees deems is of same character
Residential	1 per residential unit, reduction of required parking may be as approved by the Board of Trustees for parcels within 500 feet of a municipal parking lot or a private off-street lot with demonstrated capacity for shared parking and executed and enforceable shared parking agreement.

- B. Paving. Any parking area and access driveways shall be paved with a hard, dustless surface and maintained in such condition as to eliminate dust, dirt and mud.
- C. Parking spaces. Each parking space shall have an area of at least nine feet by 18 feet, accessible by a driveway or aisle at least 16 feet in width if used in a one-way direction and 23 feet in width if used for two-way circulation and shall be located on the same lot with the use to which it is appurtenant and have direct access to a public street.
- D. Illumination. Each parking area shall be provided with low shielded (mushroom) lighting, so arranged as to direct light away from adjoining lots or streets.
- E. Drainage. Adequate drainage shall be provided so that surface water will not drain onto or across any sidewalk, curb, street or abutting property.
- F. Any off-street parking area located in a rear or side yard, which is adjacent to any residence district, shall provide a thick-growth planting screen, between six and eight feet in height and at least five feet in depth, sufficient to form a protective buffer.

The Board of Appeals may permit suitable fencing or walls or any variation in the landscaping if deemed appropriate or desirable by reason of topography or other site conditions.

G. Notwithstanding any contrary provision contained in this Article **IV**, the off-street parking spaces required under this § **175-46** shall be deemed satisfied with respect to any proposed change in the use or occupancy of any building or structure located in any Business A District to another use or occupancy permitted under this article, provided that:

- (1) The floor area of the buildings and structures on the relevant lot do not exceed the floor area thereof as it exists at the date of adoption of this Subsection **G**;
- (2) The number of off-street parking spaces on such lot are not fewer than the number of off-street parking spaces on such lot as of the date of adoption of this Subsection **G**; and
- (3) The lot, since the date of adoption of this Subsection **G**, has not been the subject of a subdivision, lot line alteration or adjustment or other action that alters the lot area.

H. The Board of Trustees shall be authorized to reduce the required amount of off-street parking spaces and the required drive aisle widths when, upon review and consideration of proposed uses, peak parking demands, vehicle and pedestrian access and circulation, the Board determines that such reduction is consistent with the public health, safety and welfare, and with such conditions that the Board of Trustees deems appropriate to protect the public health, safety and welfare. Notwithstanding the foregoing, any parcel that, at the Effective Date of this provision, is the subject of a conditional zoning variance with respect to parking granted by the Village Board of Appeals for a term hereafter scheduled to expire unless extended upon application to the Board of Appeals, shall be subject to the jurisdiction of the Board of Appeals, and not the Board of Trustees under this Section, with respect to any proposed extension of such parking variance.

§ 175-47 **Off-street loading.**

Off-street loading and unloading of vehicles shall be provided for by adequate space on the premises. Any building with more than 15,000 square feet of floor area shall provide at least one off-street loading-unloading space on the premises, with each such space to measure at least 10 feet in width, 25 feet in length, and 15 feet in height clearance.

§ 175-48 **Fences and retaining walls.**

- A. Fences shall not exceed seven feet in height.
- B. Retaining walls shall not extend above the surface of the ground which they support.

§ 175-49 **Sewage disposal.**

All proposed buildings not connected with municipal sewerage shall be equipped with an independent sewerage system and disposal facilities approved by the Nassau County Department of Health.

§ 175-50 **Façade Review.**

- A. It is the purpose of this Article to prevent excessive uniformity, dissimilarity or poor quality of design in the exterior appearance of buildings and building facades, since such conditions adversely affect the desirability of the immediate and neighboring areas, impair the benefits of occupancy of existing developed property, undermine the stability and value of both improved and unimproved real property in such areas and prevent the most appropriate development of such areas.
- B. Except for ordinary maintenance and repairs, no person may construct, reconstruct or otherwise alter the facade of any building without obtaining a facade permit from the Board of Trustees. An application for a facade permit shall be made on such application forms as are established by the Board of Trustees.
- C. In considering each application for a façade permit, the Board of Trustees shall seek to avoid the harmful effects detrimental to the desirability, property values or development of the surrounding area that are created by the following characteristics:
 - 1. Excessive similarity to any other structure existing or for which a permit has been issued or to any other structure included in the same building permit application, facing upon the same street and within 1,000 feet of the proposed site, in respect to one or more of the following features of exterior design and appearance:
 - (i) Apparently identical facade.
 - (ii) Substantially identical size and arrangement of either doors, window, porticoes or other openings or breaks in the facade facing the street, including reverse arrangements.

(iii) Other significant identical features, such as but not limited to material, roof, line and height or other design elements, provided that a finding of excessive similarity shall set forth facts showing not only that such similarity exists, but shall further set forth facts showing that it is of such a nature as to be expected to provoke one or more of the harmful effects described in this Section.

2. Poor quality of design or excessive dissimilarity in relation to any other building facade existing or for which a permit has been issued or to any other building facade included in the same facade permit application, facing upon the same street and within 1,000 feet of the proposed site in respect to one or more of the following features:

(i) Materials of which the facade is constructed.

(ii) Height of the facade.

(iii) Lines of the facade.

(iv) Color of the facade.

(v) Plane of the facade.

(vi) Texture of the facade.

(vii) Other significant design features such as materials used in construction or nature of architectural design, provided that a finding of poor quality of design or excessive dissimilarity shall set forth facts showing that such poor quality of design or excessive dissimilarity exists, but shall further set forth facts showing that it is of such nature as to be expected to produce one or more of the harmful effects set forth in this Section.”

Section 4. Termination of Building Moratorium. The moratorium on building and development within the Village’s Business A zoning district, initially enacted by Village Law No. 1 of 2021, and subsequently extended by Village Law No. 1 of 2022, and Village Law No. 2 of 2022, is hereby terminated effective upon the effective date hereof as set forth in Section 5 hereof.

Section 5. Effective Date.

This local law shall take effect immediately upon filing with the Secretary of State.”

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 3 of 2022 of the (County)(City)(Town)(Village) of Baxter Estates was duly passed by the Board of Trustees _____ on November 2, 2022, in accordance with the applicable provisions of law.
(Name of Legislative body)

~~**2. (Passage by local legislative body with approval, no disapproval or re-passage after disapproval by the Elective Chief Executive Officer¹.)**~~

~~I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved) (not approved) _____ (Name of Legislative body) _____ (re-passed after disapproval) by the _____ and was deemed duly _____ (Elective Chief Executive Officer¹) adopted on _____ 20____, in accordance with the applicable provisions of law.~~

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____ (Name of Legislative Body) and was (approved)(not approved) (re-passed after disapproval) by the _____ (Elective Chief Executive Officer¹) on _____ 20____. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general) (special) (annual) election held on _____ 20____, in accordance with the applicable provisions of law.

~~**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**~~

~~I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was _____ (Name of Legislative Body) _____ (approved)(not approved) (re-passed after disapproval) by the _____ (Elective Chief Executive Officer¹) on _____ 20____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20____, in accordance with the applicable provisions of law.~~

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the _____

¹ Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20_____, became operative:

6. — (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 20____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative:

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1 , above.


Clerk of the Incorporated Village of Baxter Estates

(Seal)

Date: November 10, 2022