

**Planning Board of the Village of Baxter Estates**

**Resolution adopted May 10, 2022 under  
Village Code Section 147-1.A., Denying Application to  
Amend Prior Site Plan Approval**

**Fabio Salazar, Applicant  
Single Family Home at 12 Ridgeway Road**

At its January 13, 2022 Meeting, the Planning Board continued its Public Hearing, initially opened on March 10, 2021, and continued on April 20, 2021, to consider the Application of Fabio Salazar of 12 Ridgeway Road, Port Washington, NY 11050, also known as Section 5, Block 6, Lot 81, on the Nassau County Land and Tax Map, located in R-A zoning district, for site plan approval pursuant to Village Code Section 147-1(A) with respect to proposed exterior circular staircase and roof-top deck at existing single family home, which are amendments to previously approved site plan.

At the conclusion of the January 13, 2022, session of that Public Hearing, by motion duly made, seconded and unanimously carried, the Board then closed the Public Hearing, and the Chairperson directed counsel to the Board to prepare writing findings and decision denying the application, for the reasons presented during the Hearing.

Counsel prepared and circulated the draft decision, which all Board members have reviewed.

After discussion, upon motion of Chairman Keiserman, seconded by Member Athanasian, it was unanimously:

RESOLVED, that, with respect to the application of Fabio Salazar (the "Applicant"), owner of the premises known as 12 Ridgeway Road, located in a R-A Zoning District, also known as Section 5, Block 6, Lot 81 on the Nassau County Land and Tax Map (the "Premises"), for site plan approval pursuant to Section 147-1.A of the Village Code of the Village of Baxter Estates (the "Application"), the Planning Board makes the following findings and determination:

WHEREAS, this Board has considered the Application and the site plan, and all statements and data submitted to the Board with respect to them;

WHEREAS, the Application relates to the approval of a site plan for a single-family dwelling and is, therefore, deemed a Type II action by the New York State Department of Environmental Conservation, pursuant to §617.5, "Type II actions," clause (c)(9) thereof, and therefore, no environmental review is required under the New York State Environmental Quality Review Act;

WHEREAS, the members of this Board have inspected the Premises and the surrounding area;

WHEREAS, this 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 the Board has considered all presentations and documents submitted in favor of, and in opposition to, the Application;

WHEREAS, the Application has been referred to the Nassau County Planning Commission, and as said Commission has elected not to provide any recommendation to the Village within the time frame for doing so, this Application is appropriate for local determination;

WHEREAS, the Application seeks to amend site plan approval granted by resolution adopted March 25, 2017, by the Village Board of Trustees sitting as Planning Board, with respect to a prior application by the Applicant with respect to the Subject Premises (the “2017 Amended Site Plan Approval”), which in turn amended an original earlier application by the Applicant for site plan approval with respect to construction of a new home at the Premises (the “Original Site Plan Approval”);

WHEREAS, the site plan now proposed is comprised of four (4) sheets, which are entitled:

“Installation of Exterior Steel Spiral Stair at 2 Story Brick Building, 12 Ridgeway, Baxter Estates, Long Island, N.Y.,” with drawing Alt-001.00, entitled “Plot Plan, List of Drawings, Job Description Section,” drawing Alt. 100-100.00, entitled “Stairs Location Plan and Elevation,” drawing Alt. 100-101.00, entitled “Stairs Details,” and drawing Alt. 100-102.00, entitled “Stairs Details Manufacture Drawings,” each dated 11/15/21, signed and sealed by Christopher J. Sanders, Licensed Professional Engineer, NYS Lic. No. 093829 (collectively, the “Site Plan”);

NOW, THEREFORE, the Planning Board of the Village of Baxter Estates hereby finds and determines as follows:

1. The Premises presently are improved with a two-story single family home, with an attached one-story garage, on which is situated a roof-top deck. The Applicant proposes to install a circular stairway from the garage roof-top deck to a new roof-top deck proposed to be constructed on the top of the existing 2-story home’s flat roof (the “Proposed Deck”). The Applicant proposes to use the Proposed Deck as outdoor recreational space, just as

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rear yards, garage top decks and porticos off of 2<sup>nd</sup> stories are commonly used. The Applicant stated that the Proposed Deck would provide him with expansive views of the sky and Manhasset Bay to the west. The Board underscores the fact that the Premises already contain both a rear yard and a 1-story garage top deck.

2. The Board is charged with taking into account public health, safety and welfare, and comfort and convenience concerns of the community and the immediate neighborhood in particular, in considering applications for site plan approval, like the Application.
3. The Board considers privacy, noise, lighting, screening, safety and character of the neighborhood as relevant considerations for it to weigh in discharging its function.
4. The Applicant advised the Board that the home that was approved in the Original Site Plan Approval was constructed in a manner that would accommodate the Proposed Deck, with weight-bearing features to support same that would not ordinarily be used in a single family home construction.
5. The Board notes that the Applicant did not reveal his concept of the Proposed Deck to the Village in either the application that resulted in the Original Site Plan Approval, or the application that resulted in the 2017 Amended Site Plan Approval. Therefore, the Board will not assign any weight to any construction and design expenditures incurred by the Applicant with respect to a project for which Village site plan approval is required, but which he elected to incur prior to applying for such approval.
6. The Applicant claims that there are other instances of roof-top decks on other single family homes in the Village. The Board notes that most of the examples presented by the Applicant involved decks on the top of one-story attached garages, such as the one on the Premises, or porticos off of 2<sup>nd</sup> story rooms. The Board notes that it has not previously considered an application for a deck on the top of a 2-story home.
7. The placement of the Proposed Deck on the top of the flat roof of a 2-story home in a part of the Village with significant changes in elevation between properties will obviously impact the privacy of neighbors in close proximity to the Premises, through the presence of people at an elevation above neighboring yards that is unusual in a community like the Village. Several residents, including abutting neighbors, expressed concerns regarding possible intrusions into their privacy from the Proposed Deck. One resident noted the opportunity for persons on the Proposed Deck to look down unimpeded on persons sitting, relaxing or dining in their

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abutting yards, a circumstance that does not occur with persons in neighboring yards separated by fences and/or vegetation.

8. The Applicant sought to address those concerns by proposing elaborate screening measures to be installed along the four sides of the Proposed Deck. The Applicant proposed recessing a security railing from the roof's edges, to set back roof-top activity from the edges of the roof, thereby minimizing vantage points both from and of the Proposed Deck, and adding planters for additional screening. In response to the Board's request for drawings to show how the Applicant proposed to accomplish such screening for privacy purposes the Applicant presented the Plans. In the Plans, the Applicant proposes: a railing along the edges of the roof, not recessed, and interspersed with planters along the edges of the roof. As so presented, the Applicant stated that the planters would be 2' to 3' high. The Board notes that screening at such a height would not be effective to address the privacy concerns regarding persons standing on the roof top.
9. Assuming for the sake of argument that roof-top plantings might be a feasible means to mitigate adverse impacts upon privacy of neighbors, the use of plantings for screening creates the need to consider how such plantings would be maintained, and irrigated. The Applicant made several conflicting statements as to the scope of irrigation contemplated. At various times, the Applicant stated that there would be no irrigation provided. His landscape consultant, who appeared at the April 20, 2021, session of the hearing, presented an elaborate irrigation system. The Applicant's uncertainty as to how this screening feature might be made feasible, including with respect to irrigation, leads the Board to conclude that the Applicant does not understand the need to maintain such screening on a roof-top, or how to do so safely.
10. The Board also notes that railings and plantings and other methods of screening, of a height sufficient to accomplish effective screening, would appear to cause the home to exceed the maximum height restrictions, such that a zoning variance would be needed to enable the Applicant to address the public health, safety and welfare, and comfort and convenience concerns of the community and the immediate neighborhood in particular, with which this Board must contend in considering site plan applications.
11. Furthermore, the Board finds that, due to the different elevations of the Premises and the abutting neighbors, it is not feasible for some of those neighbors to plant trees or shrubs that could effectively screen potential privacy intrusions created by persons on the Proposed Deck. The Applicant himself acknowledged that the privacy issue is a legitimate concern for neighbors at a lower elevation than the Premises.

12. The Board is also concerned about the safety of the placement of heavy planters on the 2<sup>nd</sup> story of a home in the community. Storms and heavy winds in this waterfront community can cause significant damage to buildings and property. Placing heavy objects on the roof of a 2-story building at an elevation above its surrounding neighbors creates significant potential safety concerns for persons and property. The Applicant's responses to safety concerns were confusing and inconsistent, leading the Board to find that the Applicant has not adequately considered, or made safe provision for the placement of heavy items on the roof top.
13. The Board inquired as to the expected occupancy of the Proposed Deck, as large groups could exacerbate concerns about noise and privacy. The Applicant's answers, and those of his landscape consultant, covered a broad spectrum of possibilities as to potential occupancy. At the final session of the hearing, the Applicant assured the Board that there would never be more than 2 or 3 persons on the roof at any time, while also presenting to the Board revised drawings reflecting seating for 18 persons. When asked to explain the discrepancy, the Applicant provided several different answers, which the Board found inconsistent. The Board finds that, despite its inquiries as to contemplated occupancy, which directly pertains to Board concerns about privacy and noise intrusions, the Applicant failed to respond in an understandable manner.
14. The Board inquired as to the placement of furniture on the Proposed Deck, and how same would be secured. The Applicant's answers covered a broad spectrum of possibilities, from plans showing extensive furnishings, as presented by the Applicant's landscape consultant, to assurances by the Applicant that there would be no furniture placed on the Proposed Deck. The Applicant did assure the Board that he would not bolt or otherwise attach anything to the roof based upon his concerns that doing so would nullify the installation warranty for the roof. He assured the Board that he would not bring any furnishings up to the roof other than cushions to sit upon, while also assuring the Board that the heavy furnishings that would be placed on the roof, including tables, would be cabled to the railings, rather than bolted to the roof. Again, the Board finds that the Applicant has not adequately considered, or made safe provision for the placement of heavy items on the roof top.
15. The Board and several neighbors who appeared in opposition were concerned about the impact on the abutting homes of lighting on the Proposed Deck, shining down onto rear yards and into windows of abutting homes. The Applicant made a series of confusing statements at different meetings, culminating in his assurance that there would be no lighting associated with Proposed Deck. The Board notes that the Village Building

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Inspector advised the Board that the New York State Building Code mandates the use of lighting with respect to the proposed stairs, and that he believes that lighting would also be necessary on the rooftop, as a safety measure for persons using the rooftop after dark.

16. The Board and several neighbors who appeared in opposition were concerned about the impact on the abutting homes of noise from the Proposed Deck, including the sounds of voices and music traveling unimpeded from a high elevation, without even the buffers of fencing and vegetation that helps to mute sounds traveling from yard to yard. Some neighbors noted that the Applicant has demonstrated an insensitivity to his neighbors with respect to the loudness of the music that he plays in his yard presently. The Applicant's answers with regard to this concern were inconsistent, ranging from assurances that he will not have any music playing from the Proposed Deck to observations that everyone should be permitted to play music of their choosing on their properties.
17. The Board notes that, once it approves a site plan, the features of the approved site plan remain, regardless of whether the Applicant continues to own the premises, or whether a new owner resides there. Therefore, even if the Board were to assume that the Applicant would abide by those of his answers that appeared intended to respond to Board and resident concerns, and that the Applicant would disavow those of his answers which rejected such concerns, the Board notes that abuse of site plan features by subsequent owners remains a clear possibility.
18. For all of the foregoing reasons, the Board hereby denies the Application.