

VILLAGE OF BAXTER ESTATES
BOARD OF TRUSTEES
FINDINGS OF FACT AND DECISION

Application of Dejana Family Foundation
for Site Plan Approval and Related Parking Relief

25 Shore Road

(Public Hearing opened February 4, 2026, closed June 3, 2026)

WHEREAS, there has come before the Board of Trustees (the “Board”) the application (the “Application”), of The Peter and Jeri Dejana Family Foundation (“Applicant”), as owner of the premises at 25 Shore Road, Port Washington, New York, and identified on the Nassau County Land & Tax Map as Section 5, Block 401, Lots 24, 101 and 102 (the “Premises”), a portion of which is located within the Village’s Business A Zoning District, and a portion of which is located within the Village’s Residence A Zoning District, seeking (i) **site plan approval** under **Village Code Article 147**, in connection with the proposed demolition of an existing one-story commercial structure and the construction of a new 2-story office building (the “Project”), and (ii) **parking relief**, specifically, a reduction in the number of required off-street parking spaces for the proposed Project pursuant to **§ 175-46(H)** of the Village Code; and

WHEREAS, the Project also will require the approval of the Village Board of Appeals pursuant to Village Code § 175-6(L) with respect to the proposed use of residentially zoned portions of the Premises for open-air, off-street parking accessory to a permitted use in adjoining Business A Zoning District; and

WHEREAS, the public hearing for the Application was opened on February 4, 2026, adjourned to March 4, 2026, at which time it was opened solely in order to adjourn the hearing at the Applicant’s request to allow the Applicant to amend its Project plans and Application to respond to public and Board input at the February 4, 2026 hearing, and so adjourned to April 29, 2026, and on that date adjourned again to June 3, 2026, in order to accept into the record and address as needed any input from the Nassau County Planning Commission (“NCPC”), to which the Application was referred by the Village following the April 29, 2026 session of the public hearing; and

WHEREAS, at the conclusion of the June 3, 2026 session of the public hearing, the public hearing and record of the proceedings for the Application were closed; and

WHEREAS, all sessions of the public hearing commencing with the February 4, 2026 session through the June 3, 2026 session are hereinafter collectively referred to as the “Hearing”;

WHEREAS, the Application is an unlisted “action” for purposes of the NYS State Environmental Quality Review Act (“SEQRA”), and the regulations promulgated thereunder, pursuant to NYCRR § 617.5(c)(18); and

WHEREAS, by resolution adopted April 29, 2026, the Board adopted a “negative declaration” under SEQRA with respect to the Application (the “Original SEQRA Negative Declaration”); and

WHEREAS, by resolution adopted June 3, 2026, the Board adopted an amended “negative declaration” under SEQRA (the “Amended SEQRA Negative Declaration”), in order to include a reference to the Traffic Engineer’s Traffic Engineering Report Addendum dated April 15, 2026, defined in the Amended SEQRA Negative Declaration as the “Addendum,” which was an addendum to a report dated October 8, 2025, by Mulryan Engineering, P.C., Garden City, New York, traffic engineers retained by the Applicant (the “Traffic Engineer”), containing a traffic and parking assessment with respect to the Application (the “Original Traffic Study”), to assist the Board in considering the Application, and in reviewing same under SEQRA; and

WHEREAS, the Original Traffic Study as updated by the Addendum, is referred to herein as the “Traffic Study”; and

WHEREAS, all interested persons were given an opportunity to be heard at the Hearing; and

WHEREAS, the members of the Board have inspected the 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 record of the proceedings relating to the Application and upon which the decision contained herein is made, include: (i) the Application, with all exhibits and amendments made thereto by Applicant; (ii) all related submissions to the Village made at any time through the closing of the Hearing by Applicant, or by any of Applicant’s consultants, including, without limitation, the Traffic Study; (iii) any submission to the Village pertaining to the Application made at any time through the closing of the Hearing by any persons interested in the Application, or by any Village officer or employee; (iv) the transcripts of all sessions of the Hearing; (v) the Amended SEQRA Negative Declaration resolution; (vi) the May 14, 2026 email from Greg Hoesl of the NCPC to the Village, with the attachment thereto, being a copy of NCPC Resolution No. 10650-2, adopted by NCPC on May 14, 2026, recommending that the Village “take action as it deems appropriate, the Commission having no modifications” (the “NCPC Local Determination Resolution”); (vii) the February 4, 2026 letter to the Village from the Port Washington Fire Department, Inc., signed by Christopher M. Bollerman, advising the Village, among other things, that the Project “does not create unsafe conditions or disruptions to the flow of traffic within the area” (the “Fire Department Letter”); and (viii) all materials incorporated by reference into the record during all sessions of the Hearing (collectively, the “Record”).

2. The Application requires **site plan approval** pursuant to Village Code § 147-1.

3. The Board of Trustees hereby ratifies and confirms that it has designated itself as the “Board of Jurisdiction” with respect to the Application pursuant to Village Code § 147-9.

4. With respect to that portion of the Application seeking **site plan approval**, the Board has reviewed the Application and all materials submitted in connection therewith by the Applicant and determines that all Site Plan elements required pursuant to Village Code § 147-7 are contained therein, as has been confirmed by the Village Superintendent of Buildings.

5. The Board has considered all of the objectives for site plan review set forth in Village Code § 147-4, and finds that all such relevant objectives are satisfied, and the interests of the Village, its residents and the surrounding community are promoted by approving the request for site plan approval included in the Application, subject to the conditions hereinafter set forth.

6. With respect to that portion of the Application seeking **parking relief under Village Code § 175-46(H)**, the Board notes that the Project involves a proposed office building for which one on-site parking space is required for every 200 square feet of office space. The Project, as amended by the Applicant in response to input from the Board and members of the public, involves an office building with 8,575 square feet. Therefore, 43 on-site parking spaces are required pursuant to **Village Code § 175-46(A)**, while the Applicant proposes to provide only 36 on-site parking spaces, creating a deficiency of seven spaces.

7. Pursuant to **Village Code § 175-46(H)**, the Board is authorized to “reduce the required amount of off-street parking spaces ... 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.”

8. The Board has carefully considered the Traffic Study, the Fire Department Letter, the testimony provided by the Traffic Engineer, being the only expert witness providing testimony relevant to parking and traffic considerations, and the testimony of all others addressing the issues of traffic and parking, including immediate neighbors who, though not experts in such matters, can have relevant insights available only to those living in close proximity to the Premises.

9. The Board notes that the Applicant is a not-for-profit agency that is undertaking the Project to house the agency’s headquarters. The Applicant has represented that there will be no other occupants of the Premises, that the hours of use of the building will be regular business hours, Mondays through Fridays, and that the Premises shall not be used for

social events or other gatherings at any time. Furthermore, the Applicant has represented that it will accept as a condition to approval by this Board of Application a requirement that the Applicant execute and deliver an instrument of covenants and restrictions in recordable form encumbering the Premises, to be recorded and to run with the land, imposing those representations, among others, as conditions to the approvals granted, to run with the land, thereby binding both the Applicant and any and all successors as owner of the Premises (the “C&R Instrument”).

10. The Applicant, by its counsel, Michael Sahn, Esq., testified that the Applicant will agree in the C&R Instrument that it will not sell or lease any portion of the Premises to any third party without Village approval. Furthermore, Mr. Sahn testified that, as a not-for-profit entity, no such sale or lease can occur unless approval therefor is also obtained from the New York State Attorney General.

11. The Board notes that the Village Code minimum on-site parking requirement was developed in contemplation of a commercial office building constructed for commercial occupancy and activity, including visitors to professional offices, and the maximizing of occupancy consistent with building code requirements, including through floor plans that maximize the number of offices by sizing them accordingly.

12. The Application proposes only nineteen office spaces, which will include conference rooms, storage rooms and break rooms for staff, as well as a large lobby area and an office space replicating that of the deceased founder, Peter Dejana, to serve as a memorial and not for occupancy. As a result, there will be a smaller number of occupants than would be the case if smaller offices were being created for a typical office building designed by the landlord for maximum occupancy. Therefore, the proposed use, one which the Applicant will covenant to maintain under the C&R Instrument, reduces as a practical matter the number of on-site parking spaces needed to serve the proposed use in contrast to the theoretical use contemplated by the Code parking requirement.

13. With occupancy and use limited to regular business hours on regular work days, with a relatively limited number of visitors and a relatively limited number of daily occupants, the peak parking demands, as to which the Applicant will covenant not to exceed under the C&R Instrument, will be substantially less than the 36 on-site spaces proposed, even though that number represents a seven space shortfall.

14. The proposed private office building and not-for-profit use will not involve any significant vehicle and pedestrian circulation on or around the Premises.

15. The neighboring residents on Bayside Avenue, a dead-end street that bounds the Premises to the south, expressed concerns that the proposed use will lead to overflow parking needs that will result in vehicles parking on Bayside.

16. The Board finds that those concerns do not appear well-founded based upon the record, as the 36 on-site spaces should be more than adequate to accommodate even

peak use hours at the Premises. The Board also notes that there are no curb cuts proposed for the Premises on its property line abutting Bayside Avenue.

17. The Board understands those neighbors' concerns about the proliferation of delivery trucks to homes on Bayside, a development that arose with on-line shopping, and which accelerated during the Covid pandemic. However, the frequency and timing of deliveries to homes on Bayside are not in the control of the Applicant. Furthermore, deliveries to the Premises would be by trucks entering the Premises from Shore Road or Harbor Road and not from Bayside.

18. While **Village Code § 175-46(H)**, does not require that the Board apply the five prong area variance balancing test under New York State Village Law Section 7-712-b (the "Balancing Test"), in reaching its determination regarding the request for parking relief, the Board finds that it is instructive to do so, as application of that test supports the Board's determination to grant the requested parking relief.

19. The Board finds that the potential adverse impacts of the grant of the parking relief for neighboring properties and the community relate to street parking, traffic and vehicle and pedestrian safety, including potential impacts upon emergency responders.

20. The Board finds that concerns relating to potential adverse traffic and safety impacts of the proposed parking relief were fully addressed by the Traffic Engineer, who testified that, based upon data compiled by the Institute of Traffic Engineers, the professional trade association, the expected maximum number of vehicles to be parked during peak load hours at the Premises is 15. Furthermore, the Traffic Engineer opined in the Traffic Study as follows: 'Based on the results of our analysis it is our professional opinion that the granting of this application will not have an adverse impact on the traffic or parking conditions in the area surrounding the subject site.' In fact, the Traffic Engineer made that conclusion in the Original Traffic Study, which addressed the original proposal for a larger building as to which the shortfall of spaces proposed in relation to spaces required was 15 spaces. He re-affirmed that conclusion for the revised Project now before the Board, with the deficiency reduced to 7 spaces.

21. While the Board understands that the residential neighbors may have concerns about traffic and parking with the introduction of activity and a new building at the Premises, which have been unoccupied for several years, the Board notes that no other expert testimony regarding these issues was presented to the Board, either in writing or through testimony at the hearing.

22. The Board notes that concerns regarding potential interference with emergency responders was not only adequately addressed by the Traffic Study, but also by the Fire Department Letter, in which the Fire Department advised the Board that the Project "does not create unsafe conditions or disruptions to the flow of traffic within the area".

23. Each of the Board members is a long-term resident of the Village, and understands that the operation of motor vehicles in the vicinity of the Premises, on Shore Road, Harbor Road and Bayside Avenue, the roads abutting the Premises, requires caution under

existing conditions. Based upon that familiarity, and the information provided by the Traffic Expert, the Fire Department and the residents, the Board finds that the Application if approved will not materially change existing circumstances.

24. The Board finds that there is *no feasible alternative* to accomplish the objectives of the Applicant other than through the parking relief requested, as the proposed building carries a Code-imposed requirement for 43 spaces while only 36 are provided. The Applicant provided a reasonable basis for the benefit it seeks, an 8,575 square foot office building for a not-for-profit administrative office use that is not only as-of-right, but also relatively less intrusive and disruptive than many other as-of-right uses, including a commercial office space for use by other professionals and businesses welcoming clients and customers.

25. The Board notes that the proposed building satisfies or exceeds all zoning restrictions on the Premises other than the on-site parking requirement. The siting of the Premises in a flood plain zone precludes a basement, and so mechanicals and other infrastructure must be placed on the 1st, or 2nd floor or on the roof. Even so, the 2-story building's height is lower than the maximum height that the Code permits.

26. While the residents on Bayside are not legally entitled to water view rights over the Premises, the Board understands that they naturally are concerned about impacts upon their water views. The Board notes that the proposed plans involve new landscaping that will eliminate existing foliage that currently restricts views of Manhasset Bay from Bayside, and replace same with foliage that will enhance views of Manhasset Bay from Bayside, and that the Applicant has agreed to covenant under the C&R Instrument to maintain the proposed replacement plantings at heights that will continue to do so.

27. The Board finds that the parking relief sought, for a deficiency of 7 of the required 43 onsite spaces, is *not substantial* given the proposed use, which is 'as-of-right,' minimally disruptive when compared to other as-of-right uses, and contemplated to generate even at peak parking demand substantially fewer than the 36 spaces proposed to be provided, circumstances that the Applicant has agreed to covenant to maintain under the C&R Instrument.

28. The Board finds that the Applicant proposes the *minimal relief necessary* to accomplish the benefits it seeks, while creating the *minimum adverse impacts* upon the neighbors and the community, provided that certain conditions are imposed. In order to reduce the parking space shortfall for which relief is sought, the Applicant would need to reduce the proposed floor area beyond the reductions that the Applicant already has made in response to Board and community input. The Board notes that a commercial office building serving professional and business tenants might be sized to reduce or eliminate the shortfall, but configured with smaller office spaces increasing the number of occupants of the building beyond what is practical for a building with only 19 large offices. And, as noted above, the Applicant will be committed to maintain the proposed floor plan under the C&R Instrument. Therefore, the Board finds that the Project is self-limiting as to the likely number of vehicles at the Premises at any time.

29. The Board finds that the Project will not have an *adverse impact upon the physical or environmental conditions in the neighborhood*. As noted, the Board has considered the Application under SEQRA and made a negative declaration with respect to it.

30. Finally, the Board notes that the *practical difficulty* identified by the Applicant, a desire to construct a new building with floor area that requires, under existing Village Code provisions, 7 more on-site parking spaces than are proposed, is *self-created*, as the Applicant purchased the Premises with constructive knowledge that the Project could not be accomplished as contemplated without relief from the parking requirement. Nevertheless, that is but one of the factors that a board must weigh when it applies the Balancing Test to a land use application, and is not dispositive of an application. This Board, in its voluntary application of the Balancing Test to the request for parking relief, deems it unnecessary, in light of all relevant factors, to place significant emphasis on this factor.

31. The Board finds that, under the Balancing Test, having weighed the benefit to the Applicant against the adverse impact, if any, upon the adjacent and neighboring property owners and the community if the Application were to be granted, finds that the benefit to the Applicant if the Application is granted outweighs any adverse impact upon the neighbors and the community.

32. During the Hearing, the Board heard testimony referring to the existence of covenants and restrictions relating to all or part of the Premises, purporting to restrict development of the encumbered property to single family home, only, or the offices of a professional. Village files contain copies of an apparently relevant instrument dated 1927, that run in favor of Baxter Estates, Inc., the private developer that developed the Village prior to its incorporation as a village in 1931. That instrument is referred to herein as the "Private Developer Instrument." The Premises have been improved for many decades with a commercial building, as to which Village permits and approvals were granted. In fact, the Village occupied that commercial building for many years as its Village Hall. Furthermore, the portions of the Premises situated in a Residential zone have for decades contained parking spaces accessory to the commercial building, a use approved from time to time by appropriate Village boards.

33. The Village Attorney has advised the Board that a village upon incorporation does not automatically succeed to the interests of a developer under recorded instruments entered into by private property owners of property now in the village. No documentation exists in Village files that evidence that the Village has any right to enforce what are private contract rights. The Village exercises control over real property through its land use permitting process, Village Zoning Code and Building Code.

34. The Premises reflect many years of use that would appear to violate the Private Developer Instrument, but which reflect compliance with the Village's land use permitting process, Village Zoning Code and Building Code. The Village Code expressly designates a portion of the Premises in the Business A District, and a portion in the Residence A District. That history demonstrates the Village's position that it does not have the right to enforce those Private Developer Instruments, or that, even if it had such rights, it elects not to do

so, and instead to control the Premises through its land use permitting process, Village Zoning Code and Building Code.

35. To the extent that any person or entity pursues enforcement of the Private Developer Instrument against the Premises, the risks associated with that possibility are borne by the Applicant or its successors in interest as owners of the Premises. In any event, the appropriate forum to adjudicate any issues arising from the Private Developer Instrument would be a court of competent jurisdiction.

36. During the Hearing, the Board heard testimony that a portion of the proposed building would be situated in the portion of the Premises zoned as Residence A. The Board finds, based upon the amended Project plans now before the Board, as well as the testimony of the Applicant's representatives, and input from the Village Superintendent of Buildings, that the proposed building is to be situated entirely within the Business A Zoning District. Nothing herein is intended or shall be deemed to allow any portion of the Building to be situated in the Residence A-zoned portion of the Premises.

37. The Board notes that it heard testimony from a significant number of speakers who extolled the virtues of the Applicant, a not-for-profit corporation that exists to support the Port Washington community, including through generous monetary donations to worthy persons and entities comprising the community. The Board recognizes the good work that the Applicant does in that regard, but notes that this Board's evaluation of the merits of the Application, and its determination to grant the Application, are based solely upon the guidelines set forth in the Village Code addressing Site Plan Approval and relief from the parking requirements, as well as the Balancing Test, as voluntarily applied by the Board.

38. Nothing herein is intended or shall be construed to authorize the erection of any signage at the Premises, regardless of the depiction of same in any of the Application materials. All signage shall be subject to review and approval of the Village Superintendent of Buildings and any other Village Board having jurisdiction thereover.

NOW, THEREFORE, based upon the foregoing findings of fact, this Board hereby grants the application for site plan approval and parking relief for the proposed Project at the Premises subject to the following conditions:

(a) All construction and installation in connection with the proposed Project, as presented in this Application shall be subject in all respects to the approvals of the Building Department of the Village and any other body having jurisdiction over said Project, and, furthermore, shall be effected substantially in accordance with the plans entitled "Proposed Office Building for 25 Shore Road," prepared by Mojo Stumer Associates, P.C. Greenvale, New York, Northcoast Civil (principal Michael Rant), and Piscitelli Landscape Architecture (principal Joseph Piscitelli), collectively comprised of fourteen sheets, each dated April 20, 2026, identified as T-000, T-001, T-003, T-004, T-005, T-010, Z-100, Z-101, A-101-103, A-200, A-201, A-300 and A-301 (the "Revised Plans"), with such minor modifications thereto not requiring a variance as are acceptable to the Superintendent of Buildings, and such other modifications thereto not

requiring a variance as are required by the Board of Appeals or any other Village Board having jurisdiction.

(b) The Applicant must apply to the Village Board of Appeals for the approval required pursuant to Village Code § 175-6(L) with respect to the proposed use of residentially zoned portions of the Premises for open-air, off-street parking accessory to a permitted use in adjoining Business A Zoning District, and that Board must grant such approval.

(c) The Applicant must apply to the appropriate Village Board(s) for any approvals or other relief required pursuant to the Village Code (e.g., Façade review) with respect to the Project, in the event that the Board of Appeals grants the required approval to allow use of residentially zoned portions of the Premises for open-air, off-street parking accessory to a permitted use in adjoining Business A Zoning District, and such other Board or Boards must grant any such approval required.

(d) The Applicant shall execute and deliver to the Village, in form acceptable to the Village Attorney and Superintendent of Buildings, an instrument of covenants and restrictions in recordable form, to be recorded against the Premises and to run with the land, establishing the following restrictions upon the development and use of the Premises for so long as the Project hereby approved is maintained at the Premises:

1. The Premises shall at all times be occupied solely by the Applicant.
2. The Premises shall not be sold, leased or otherwise transferred to any third party, and no third party shall be permitted to occupy any portion of the Premises at any time.
3. The floor plan for the building to be constructed hereby shall not be materially varied for so long as the Project remains at the Premises.
4. All parking spaces on the Premises shall be available solely and exclusively to employees, contractors and consultants performing services for the Applicant, contractors performing construction, maintenance, and repair work at the Premises, delivery vehicles making deliveries to the Premises, and guests of the Applicant. At no time shall any such parking space be leased, licensed or otherwise made available to any third party.
5. All landscaping at the Premises shall be installed and maintained as depicted in the Landscaping Plan included in the Application as amended. Plantings as shown thereon along the southeasterly property line observable from Bayside Avenue and along the southerly property line shall be maintained at a height not greater than three feet.
6. No persons entering the Premises shall park any vehicles on Bayside Avenue at any time. The Applicant shall advise all of its employees, contractors, consultants and guests of this restriction prior to or at the

time of their being retained as an employee, contractor or consultant or invited as a guest.

7. The maximum number of vehicles to be parked at the Premises at any time shall not exceed 36.
8. The Premises shall not be used for any events, parties or other large gatherings.
9. The number of full-time employees of the Applicant working at the Premises at any time shall not exceed 15.
10. The hours of occupancy of the building at the Premises shall be limited to 7:30 a.m., to 6:30 p.m., Mondays through Fridays, unless prior written consent is issued by the Village for occupancy at other hours or on other days.
11. The Applicant is and shall continue to be a private, closed charitable foundation under New York State Law, and does not and shall not solicit or accept donations of funds from any third party.
12. The Village Superintendent of Buildings shall be granted access to the Premises, including the interior of the proposed building, at all reasonable times for the purpose of confirming compliance with the conditions set forth above.

Date: _____