

Village of Baxter Estates Board of Appeals

FINDINGS OF FACT AND DECISION

July 22, 2026 Public Hearing

(Carchi Application, 6 Ridgeway Road, for Fence Variance)

WHEREAS, this Board has considered the application (the “Application”), of Fabian Carchi (“Applicant”), owner of premises known as 6 Ridgeway Road, Port Washington, New York, Residence A zoning district, shown on Nassau County Land & Tax Map as Section 5, Block 6, Lot 89 (the “Subject Premises”), for variances from Village Code §175-17(D), to legalize existing fence constructed without a permit and with a height of 6 feet, where maximum permitted fence height is 4 feet; and

WHEREAS, the residential area variance application, a Type II action under the New York State Environmental Quality Review Act (“SEQRA”), was referred to the Nassau County Planning Commission (the “NCPC”), which has not notified the Village of any objections or modifications within the time frame applicable under the NCPC’s stream-lining rules, authorizing this Board to take action as it deems appropriate; and

WHEREAS, the Board has duly conducted a public hearing (the “Hearing”) with respect to the Application at which all parties in interest were given an opportunity to be heard; 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, and in opposition thereto;

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 Ridgeway Road.

2. The Applicant appeared on his own behalf at the Hearing and presented the Application to the Board. No members of the public attended the Hearing.

3. The Board notes that the Applicant does not appeal the determination by the Village Building Official denying the Applicant’s application to legalize the installed fence, and instead seeks the fence height zoning variance identified by the Building Official in his denial letter dated June 2, 2026.

4. Pursuant to New York State Village Law Section 7-712-b.3.(b), the Board must weigh the benefit that the Applicant seeks by the grant of the proposed variances against the potential detriment that such a grant would present to the health, safety and welfare of the neighborhood or community, based upon the five factors set forth therein (the “Balancing Test”).

5. The benefit that the Applicant seeks is to maintain a fence around the perimeter of his rear yard intended to contain his two small children when playing outside and to protect all family members and visitors from the steep, approximately 10 foot drop from the rear property line of the Subject Premises to the rear yard of the residential property known as 5 Central Drive, which shares the rear property line with the Subject Premises.

6. The Applicant represented to the Board that his children have health challenges that create behavioral issues, particularly for his son, age 6. Those circumstances create a real possibility that one or both children may fail to appreciate the dangers of the steep drop-off in elevation, which could lead to serious injury.

7. The Applicant represented to the Board that a 6 foot high perimeter fence existed in portions of his backyard when he purchased the Subject Premises in 2022, having moved from a condo in Queens, NY, with his family. He presented to the Board blueprints that he represents he found in the home at the Subject Premises after moving in, and which depict the home as designed, including a 6 foot high rear yard perimeter fence.

8. The Board notes that a four foot fence is permitted as of right, without a variance for the perimeter of a rear yard, subject only to issuance of a fence permit by the Building Official.

9. The Board notes that the Village Building Official has advised the Board that Village building files for the Subject Premised do not contain any evidence that a fence permit was ever issued for the Subject Premises.

10. The Board has reviewed photographs submitted by the Applicant with the Application that show an old fence in need of repair, and a fallen tree from the abutting parcel at 5 Central Drive lying on portions of the damaged fence.

11. The Applicant represented to the Board that he felt compelled to protect the health and safety of his family to undertake fence replacement immediately, and that his lack of familiarity with Village fence permit rules and zoning restrictions led him to take action to replace the fence prior to gaining knowledge of such rules and restrictions. He advised the Board that he learned of the rules and regulations only after being contacted by the Village Clerk.

12. Undesirable Change in Character of Neighborhood/Detriment to Nearby Properties. The Board must consider whether the grant of the proposed variance will produce an undesirable change in the character of the neighborhood or a detriment to nearby properties.

13. The new fence, six feet in height where only four feet in height is permitted, has been installed in the rear yard of a single family home where a 6 foot high fence has existed for many years, albeit in only portions of the area where the new fence has been installed.

14. The Board notes that, while the Applicant has submitted his affidavit of mailing evidencing delivery of a copy of the notice of the Hearing to all required recipients, no

one appeared at the Hearing to address the Application. The Village Clerk advised the Board that no one had contacted the Village Office with any input, for or against the Application. The Applicant has represented to the Board that he discussed the Application with several neighbors, including those abutting neighbors who are most impacted by the variance, and all of those neighbors expressed support for the Application.

15. Based upon those circumstances, the Board finds that the grant of the proposed variance will not change the character of the neighborhood or produce a detriment to nearby properties.

16. The Board recognizes that the Village Code provision governing fences in the Residence A zoning district not only restricts height, but also requires that the “good side” of the fence must face the adjoining property. The Building Official consistently interprets that provision as referring to the side of the fence from which the structural components of the fence by which the fence is assembled in a permanent manner are least visible. In other words, the fence components to which the outward facing fence slats are attached are largely hidden from view from the “good side.”

17. The Board recognizes that, from that interpretation, the “good side” of the installed fence appears to face the interior of the Subject Premises, although the installed fence is somewhat unique in composition. In this Application, the Building Official did not call out the need for a variance with regard to the ‘good side’ restriction.

18. The Board notes that the support of the neighbors for the installed fence as it now exists, as represented by the Applicant and uncontroverted on the record, supports the finding that, even if the ‘good side’ of the fence is not positioned properly, the existing positioning of the installed fence will not change the character of the neighborhood or produce a detriment to nearby properties.

19. Furthermore, the Board finds that the side of the installed fence facing the interior of the Subject Premises’ rear yard is not as easily scalable, or climbable, as is the side facing toward the abutting neighbors. Therefore, the benefit sought by the Applicant, enclosing the rear yard to protect family members and visitors from a potential fall down the 10 foot drop at the property line, is promoted by leaving the installed fence as it is now positioned.

20. Feasible Alternative to Area Variance. The Board must consider whether the benefit sought by Applicant can be achieved by some method, feasible for Applicant to pursue, other than an area variance. In this case, there is no such feasible alternative available, as the enclosure of the rear yard of the Subject Premises requires a fence, and the 6 foot fence minimizes the potential dangers created by the approximately ten foot height differential at the shared rear property line.

21. Substantiality of Area Variances Sought. The Board must consider whether the requested area variances are substantial. In this case, Applicant seeks a variance of approximately 50%. While such a percentage is substantial numerically, courts construing the requirement have ruled that the determination cannot be made on simple arithmetic, but must be

evaluated under the applicable circumstances. Here, the variance sought is necessary to minimize to a reasonable extent exposure to the danger of a steep drop to the abutting property. Therefore, the Board does not find the variances sought to be substantial under applicable law.

22. Adverse Effect/Impact on Physical/Environmental Conditions in Neighborhood. The Board must consider whether the requested area variances will have an adverse effect or impact on the physical or environmental conditions in the neighborhood. Under the New York State Environmental Quality Review Act (“SEQRA”), an application for residential area variances is a “Type II” action, requiring no action by the Board under SEQRA. As such, as a matter of law, the Application will not have any material adverse impact upon the environment. The Board does not find any reasonable distinction to be drawn between the words “physical” and “environmental” in the context of this prong of the Balancing Test.

23. Self-created Nature of Applicant’s Difficulty. The Board must consider whether the difficulty that Applicant is experiencing which leads to the requested area variances is self-created. The Board recognizes that the difficulties presented by the Subject Premises that underlie this application for variances are self-imposed, as Applicant acquired the property subject to the present zoning code, and is pursuing legalization of a perimeter fence of a height greater than the Village Code permits. Nevertheless, to the extent that the difficulty confronted by Applicant is deemed self-imposed, that is merely one of the five factors considered by the Board in rendering a decision on an area variance application, and is not dispositive.

24. The Board notes that an applicant’s ignorance of applicable law is no excuse for failing to comply with the law. However, unless such ignorance rises to a level that demonstrates to the Board the bad faith of an applicant, the Board does not give material weight to the fact that an applicant has undertaken work in violation of the Village’s building and/or zoning laws. Such a circumstance is properly the subject of the Village’s enforcement officials and Village Justice Court. Here, the Board does not find bad faith on the part of the Applicant that warrants a denial of the Application.

25. This Board considers an application to legalize unlawful construction from the perspective of whether the Board would have granted the required relief had the Application been made prior to the unlawful construction. The Board finds, for all of the foregoing reasons, that it would have granted the Application had the Applicant submitted same prior to installing the existing fence.

26. The Board reviews each application based on the unique nature of the subject parcel of real property, and the grant of a variance with respect to one parcel does not create a legal precedent that the same variance be granted in a subsequent application for a different parcel. Only the facts and circumstances of each application can determine whether a variance is appropriate for that parcel.

27. In this case, the Board finds that the unique nature of the Subject Premises in relation to the abutting Premises that drop off about 10 feet at the shared rear property line further minimize the opportunity for the Board’s decision with respect to this Application to

serve as precedent in connection with an application for a fence height variance made under different circumstances.

NOW, THEREFORE, based upon the foregoing findings of fact, this Board has weighed the detriment to Applicant, if the part of the application seeking area variances is denied, against the adverse impact, if any, upon the adjacent property owners and the community if that part of the Application were to be granted, and based upon that weighing process, finds that there will be a detriment to Applicant if that part of the Application is denied that outweighs any adverse impact upon the neighbors and the community if same is granted with certain conditions, and, therefore, determines as follows:

1. The Board grants the Application, subject to the Applicant's removal of the portion of the fence in the northeast corner of the Subject Premises' rear yard that exceed 6' in height, so that the height thereof shall be reduced to 6 feet.
2. The variance is granted only to the extent specifically described in the foregoing condition. 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.

Board of Appeals of the
Village of Baxter Estates

By: _____
William Haagenson, Chairman

Date