

RESOLUTION

**AUTHORIZING SUBMISSION OF REPORT AND RECOMMENDATIONS TO
THE BOARD OF TRUSTEES ON THE ON THE
PROPOSED REZONING PETITION, SITE PLAN AND SUBDIVISION
APPLICATIONS FOR 80 BOWMAN AVENUE**

BE IT RESOLVED, that the Planning Board of the Village of Rye Brook adopts the attached Report and Recommendation to the Village of Rye Brook Board of Trustees on the proposed Rezoning Petition, Site Plan and Subdivision applications and requests the Secretary to the Planning Board forward a copy of the Report to the Board of Trustees and the Village Administrator.

**PLANNING BOARD OF THE VILLAGE OF RYE BROOK
REPORT AND RECOMMENDATIONS TO THE
VILLAGE OF RYE BROOK BOARD OF TRUSTEES ON THE
PROPOSED REZONING PETITION, SITE PLAN AND SUBDIVISION
APPLICATION FOR 80 BOWMAN AVENUE**

I. PROJECT OVERVIEW

On April 12, 2011, Village of Rye Brook Board of Trustees (“BOT”) referred a proposed Site Plan and Subdivision Application to the Village of Rye Brook Planning Board (“Planning Board”) for submission of a Report and Recommendation. The application was made by property owner, Bowridge Commons LLC (Frank Madonna) (“Applicant”) to construct eight (8) two-family attached dwellings on property located at 80 Bowman Avenue and designated as Section 141.27, Block 1, Lots 26, 31 and 32 on the Town of Rye Tax Map (“Property”). The Property is located in the C-1 Zoning District.

After the BOT adopted new affordable housing legislation creating the FAH District and pursuant to the provisions of that legislation, the Applicant submitted a Petition to the BOT requesting a zone change from C-1 to the FAH Zoning District. That Petition was referred to the Planning Board on March 27, 2012.

II. PLANNING BOARD DISCUSSION

The Planning Board reviewed this application at its May 12, 2011, July 14, 2011, October 13, 2011, May 10, 2012, July 12, 2012 and September 13, 2012 meetings. At the request of the Applicant the application was adjourned from the Planning Board’s August 11, 2011, September 13, 2011, November 10, 2011, December 8, 2011, January 12, 2012, February 9, 2012, March 8, 2012 and April 12, 2012.

F.P. Clark Associates, the Village's Planning Consultant, provided Memoranda to the Planning Board, dated April 29, 2011, July 8, 2011, May 23, 2012, July 9, 2012 and September 7, 2012, based on a review of the application and information provided by the Applicant and Village Staff. Dolph Rotfeld Engineer, P.C. ("DRE"), the Village's Engineering Consultant, provided Memoranda to the Planning Board dated April 27, 2011, July 11, 2012, September 6, 2012 and September 12, 2012, regarding stormwater management and site engineering. The Village's Emergency Services Task Force provided Memoranda to the Planning Board dated June 29, 2012 and September 6, 2012. HDR, the Village's environmental consultant, provided a Memorandum to the Planning Board dated September 12, 2012. The memoranda are incorporated by reference herein and the comments set forth in the memoranda will be incorporated below, as applicable.

At the Planning Board's May 12, 2011 meeting, the Applicant presented the proposed site plan and subdivision application. The Applicant stated that the proposed configuration of a one-bedroom rental unit on the ground floor with a two-bedroom ownership unit on the 2nd and 3rd floor with a total of 16 units divided into two buildings has been reviewed by Westchester County in connection with the Applicant's affordable housing subsidy. The Planning Board questioned whether the site plan could be revised to reduce the bulk and create a more attractive view from Barber Place, perhaps through reducing the size of the end units in each of the buildings.

The Applicant's submission for the July 14, 2011 meeting stated that the Applicant intended to request a rezoning to the proposed Fair and Affordable Housing District (FAH") if and when the Board of Trustees approves the then-pending proposed legislation

creating the FAH District. Between the Planning Board's July 14, 2011 meeting and its May 10, 2012 meeting, the Applicant requested adjournments for appearances before the Planning Board. In the meantime, the BOT adopted legislation creating an FAH District. At the Planning Board's May 10, 2012 meeting, after the BOT's referral of the Applicant's Petition for inclusion in the FAH District, substantive review of the application by the Planning Board resumed.

A. FAH Petition

The purpose of the FAH District is to “provide flexible land use regulations, a streamlined permitting process and incentives to encourage the development of fair and affordable housing within the Village that will remain fair and affordable for at least 50 years as required pursuant to the Stipulation” and to “encourage a balanced demographic.” (Village Code §250-26.1(B)). Rezoning the property from the C-1 District to the FAH District will permit the construction of sixteen (16) units of affordable housing in a transitional area between the C-1 District to the west and the R-2F District to the north, east and south. The consensus of the Planning Board is that rezoning the Property to FAH [*is/is not*] appropriate.

Pursuant to the proposed site plan, the following waivers¹ would be necessary from the BOT, as set forth in the Village of Rye Brook Building Inspector's Zoning Analysis,

¹ Section 250-26.1(F)(3)(b) permits the BOT to waive the applicable dimensional and bulk requirements as it deems appropriate upon the balancing of the factors set forth therein. The dimensional and bulk standards applicable in the FAH District are those of the current zoning district (in this case C-1) plus any additional FAH District requirements (i.e. minimum floor area, occupancy standards).

dated August 29, 2012, in order for the site plan to be consistent with the provisions of the

FAH District:

1. **§250-32.F.(1).** The minimum front yard setback is 30 ft. The applicant proposes an 11.5 ft setback at the Barber Place elevation. Therefore an 18.5 ft front yard setback waiver is required.
2. **§250-32.F.(3).** The minimum required rear yard setback is 30 ft. The applicant proposes a 10.6 ft. rear yard setback at the south elevation. Therefore a 19.4 ft. rear yard setback waiver is required.
3. **§250-32.H.** The minimum required useable open space is 3,200 sq. ft. The applicant proposes to provide 2,036 sq. ft. Therefore a 1,164 sq. ft. useable open space waiver is required.
4. **§250-32.G./250-31.G.(2).** The maximum allowable building height is 30 ft. The applicant proposes a height of 33 ft. Therefore a 3 foot maximum building height waiver is required.
5. **§250-32.G./250-21.G.(1).** The maximum number of stories is 2. The applicant proposes 3 stories. Therefore a one story waiver is required. *(The code allows for a maximum height of 40 ft. and 4 stories if semi-fireproof construction is proposed. The plans contain no information in this regard.)*
6. **§250-32.K.(1)/250-6.G.(1)(c)[2].** The minimum number of required off-street parking spaces is 5/two-family dwelling for a total of 40 spaces. The applicant is proposing 24 spaces. Therefore a waiver for 16 off-street parking spaces is required.
7. **§250-2** Definitions, PARKING SPACE. The minimum parking space size is 175 sq. ft. The applicant proposes to provide parking spaces measuring 162 sq. ft. in size. Therefore a 13 sq. ft. waiver is required for each parking space.
8. **§250-26.1.F.(3)(d).** The minimum required floor area of a one-bedroom AFFH unit is 675 sq. ft. The applicant is proposing all the one bedroom units to be 617 sq. ft. in size. Therefore a waiver of 58 sq. ft. is required for all one bedroom units.

The dimensional and bulk requirement waivers requested by the Applicant from the BOT must be reviewed in accordance with the standards set forth at Section 250-26.1(F)(3)(b) which are as follows:

- [1] Consistency with the purpose and intent of the Village of Rye Brook Zoning Code and Official Map;
- [2] Furthering fair and affordable housing within the Village;
- [3] Harmony with the appropriate and orderly development of the immediate area;
- [4] Impacts upon the orderly development and quality of life for neighboring areas;
- [5] Advancement of economic development within the Village;
- [6] The location, nature and height of buildings, location of parking and the nature and extent of landscaping on the site such that the modified dimensional or bulk requirement will not hinder or discourage the appropriate development and use of adjacent land and buildings or substantially impair the value thereof;
- [7] Adverse environmental impacts; and
- [8] Whether the requested modification or waiver is the minimum necessary to maintain the economic viability of the development proposal.

Based on the aforementioned standards, the Planning Board recommends the waivers be granted.

B. Subdivision Application

The Property currently consists of three tax lots: (1) SBL 141.27-1-26 a.k.a. 80 Bowman Avenue (“Tax Lot 26”); (2) SBL 141.27-1-31 a.k.a. 14 Barber Place (“Tax Lot 31”); and (3) SBL 141.27-1-32 a.k.a. 12 Barber Place (“Tax Lot 32”). Pursuant to the “*Subdivision Map of Property Belonging to BCK Realty Corporation in the Town of Rye, Westchester County, NY,*” dated July 6, 1929 and filed in the Office of the Westchester County Clerk on September 11,

1929 as Vol. 71, Page 36, Tax Lot 26 consists of three separate building lots which are identified on the 1929 Subdivision Map as Lots 6, 7 and 8. Tax Lots 31 and 32 are labeled on the 1929 Subdivision Map as Lots 10 and 9, respectively.

The current Subdivision Application proposes to merge the 5 building lots shown on the 1929 Subdivision Map into a single lot which will consist of 0.5046 acres. The Subdivision Application and proposed “*Preliminary Merger and Reapportionment Map Prepared for Bowridge Commons LLC*,” dated July 12, 2012, prepared by Thomas C. Merritts Land Surveyors, P.C., was reviewed by the Village Attorney who provided the following comments:

1. Pursuant to Village Code § 219-30(B), the *Preliminary Merger and Reapportionment Map Prepared for Bowridge Commons LLC* should be revised to include the names of owners of record or properties directly across Bowman Avenue and Barber Place from the proposed subdivision.
2. Topographic information pursuant to Village Code §219-30(C) should be added to the *Preliminary Merger and Reapportionment Map Prepared for Bowridge Commons LLC* or the Applicant should indicate whether a waiver of this requirement is requested.

The consensus of the Planning Board is that the *Preliminary Merger and Reapportionment Map Prepared for Bowridge Commons LLC* should be revised to address these comments, but otherwise the Planning Board recommends approval of the Subdivision Application.

C. Site Plan Application

The Planning Board has received comments on the site plan from FP Clark, DRE, HDR and the Village’s Emergency Services Task Force (“ESTF”). Outstanding comments from Village Staff and Consultants are as follows:

1. DRE's September 12, 2012 Memorandum states in relevant part:

1. To accompany the painted pavement arrows, it is recommended that a "Do Not Enter" sign be installed where the angled parking meets the larger parking area.
2. Snow storage on the lawn areas creates annual maintenance problems in the spring. It is recommended that a temporary snow storage area be provided for loading onto trucks. With regards to snow removal, no snow may be plowed into Bowman Avenue or Barber Place.
3. A detail of the concrete driveway apron must be provided.

2. The ESTF's September 6, 2012 Memorandum states in relevant part:

1. **Cover Letter Item 12-1.**² The applicant's response fails to address this concern. The ESTF recommendation to increase the width of the roadway at Barber Place is directly related to the proposed density. Considering the parking status on Barber Place, the current roadway width could impede apparatus staging & resident evacuation in an emergency situation. As previously stated, the width of the Barber Place roadway should be increased to the maximum extent possible by eliminating the grass buffer strips currently shown on either side of the proposed sidewalk at the Barber Place elevation, and relocating the sidewalk closer to the property line. (*Barber Place is one way with parking on the east side of the street, the west side of the street will remain an enforceable no parking zone*)
2. **Cover Letter Item 12-4.** The applicant has revised the plans to include a 3'-0" wide stripped access aisle serving the south building. The ESTF recommends that this aisle be increased in width to the maximum extent possible by relocating the proposed waste recycling enclosure as close to the west property line as possible. This would then allow the curbing as well as parking spaces 20, 21, 22, 23 & 24 to be shifted accordingly thus increasing the aisle width.

² References to "Cover Letter" refer to the August 23, 2012 cover letter from Federico Associates to the Planning Board.

DRE's comments, which DRE states are relatively minor, are based upon the latest plan submittal *Bowridge Commons Fair and Affordable Housing Project*, Sheets 1-10, prepared by Federico Associates, dated March 28, 2011, last revised September 10, 2012. However, with respect to DRE Comment #2 regarding snow storage the Village Planning Consultant does not share DRE's concern with snow storage on lawn areas and recommends that snow storage remain on the lawn and that the Landscape Plan be revised to remove or relocate the proposed tree in the area of the proposed snow storage. The consensus of the Planning Board is that it does not recommend changing the plans as recommended by DRE's Comment #2 and recommends that the Landscape Plan be revised in accordance with the Village Planning Consultant's comment.

The ESTF has not yet reviewed the September 10, 2012 plans to determine whether the revised plans satisfy the comments set forth in the September 6, 2012 ESTF Memorandum.

Remaining site plan issues such as lighting and traffic, including comments from FP Clark's September 7, 2012 Memorandum regarding landscaping and parking, have been satisfactorily addressed by the Applicant.

The Planning Board has also reviewed the site plan in terms of environmental impacts, such as hazardous materials, construction impacts, school district impacts, and impacts to vegetation:

1. Hazardous Materials

Due to the Property's proximity to the former gas station and a former dry cleaning establishment the Planning Board requested that the Applicant submit a Phase I

Environmental Site Assessment. In response, the Applicant submitted a Phase I prepared by TEAM Environmental Consultants, Inc. which was reportedly conducted in general conformance with the ASTM Practice E 1527-05 guidelines. The Phase I concluded that “Based on the property setting and planned site use, availability of a municipal water supply, review of available information, performance of Phase I ESA interviews, and findings of the property walk through inspection, no significant and immediate environmental liability issues or “recognized environmental conditions” associated with the subject property were identified.” The Phase I also concluded that “No follow up environmental site investigations are recommended at this time.”

The Phase I was reviewed by the Village’s Environmental Consultant, HDR. HDR reviewed information regarding reported spills on adjacent or nearby properties including, 107 South Ridge Street (Millers Dry Cleaners), 101-105 South Ridge Street (former Mobil station) and 93 South Ridge Street (Valero station). HDR also reviewed the laboratory results from the soil samples collected by Long Island Analytical Laboratories in April 2012. Based on its review, HDR made the following findings and recommendations in its September 12, 2012 Memorandum:

- The subject site has undergone only limited environmental testing during the application process. Shallow soil sampling by Long Island Analytical Laboratories Inc. at depths of 0-1.5 ft below grade were collected on April 24, 2012 at locations designated as “behind gas station” and “behind dry cleaners”. The depths of these samples are not adequate to assess potential impacts – especially from VOCs, which can be mobile in the subsurface environment - from adjacent properties.
- PCE was detected at a relatively low concentration of 0.0093 mg/kg (below NYSDEC guidelines), in one soil sample collected in May 2011 at the former Mobil property. The sample location

is near the eastern property line. PCE is a compound typically associated with dry cleaning operations.

- It is mentioned in the Phase I submitted by the applicant (May 2012) that a vapor barrier will be installed beneath the proposed residential structures. We agree that the installation of a vapor barrier – and/or a subslab venting system - is appropriate for the site, as a safe guard against potential vapor intrusion of VOCs. As noted, the subject site is in close proximity to sites with (or which have historically had) NYSDEC spills associated with them. These sites include 101-105 South Ridge Street (former Mobil gasoline service station), 107 South Ridge Street (Millers Cleaners), and 93 South Ridge Street (Valero). Given the residential nature of the proposed development, a vapor barrier and / or subslab venting system would provide an added safeguard for building occupants subsequent to construction (and over the long term).
- Based on the above recommendation to address potential vapor intrusion at the subject site, supplemental environmental testing is recommended on a limited basis for purposes of characterizing current VOC levels in the subsurface. It is recommended that soil samples be collected from five additional on-site locations, with soils visually assessed and field screened (i.e., 2 ft intervals) from ground surface to the shallow water table. A minimum of one sample – biased towards any observed observation of potential contamination – should be collected from each location and submitted to an analytical laboratory for VOC analysis (full list). Five supplemental sample locations – including one beneath the proposed building footprint located closest to the former Mobil Station - provide a sample frequency of approximately 1 per 4,400 s.f., which appears appropriate for the subject site.
- It is also recommended that the soil sample location beneath the proposed building footprint closest to the former Mobil station be converted to a flush-mounted shallow monitoring well point, using well construction details that will allow for development and low-flow sampling of VOCs (full list). It is recommended that one sample be collected from this well point. The recommended sampling should be conducted by a qualified environmental professional, and samples should be analyzed by an ELAP-certified laboratory. It is anticipated that the

recommended soil sampling and shallow well installation can be conducted in 1-2 days of site work, assuming the site is readily accessible and no existing subsurface utilities or obstructions are present. Groundwater sampling can be conducted 2-3 weeks after well installation and development.

- Field notes, documentation, and analytical data generated from the supplemental sampling should be reported to the Village upon receipt, along with a narrative memorandum that provides interpretation of the data (including comparison of data to corresponding NYS Soil Cleanup Objectives [SCOs] and groundwater standards). This site-specific data will allow full scoping of the applicant's approach to address potential vapor intrusion (i.e., vapor barrier and/or subslab venting system).

Further, as noted in the Phase I, prior to the issuance of a Demolition Permit for existing dwellings on the Property a formal asbestos inspection must be completed.

2. Construction Impacts

The Applicant submitted a Draft Construction Management Plan which was reviewed by the Village Engineer/Superintendent of Public Works. The Memorandum from the Village Engineer/Superintendent of Public Works, dated September 13, 2012, provided comments regarding the Draft CMP which were incorporated by the Applicant in a revised submission on September 13, 2012, as confirmed by the Village Engineer's second Memorandum dated September 13, 2012.

3. School District Impacts

FP Clark's May 24, 2012 Memorandum provides an analysis regarding the potential school age children generated by the proposed application which concludes that "the total number of school-age children that may be generated by the development would be six to seven children that would attend schools in the Port Chester-Rye school district." The

analysis also studied the cumulative impacts when considering the two school age children that would be generated by the nearby development of affordable housing in the FAH District that would be located at 525 Ellendale Avenue in Rye Brook. In this regard, the May 24, 2012 FP Clark Memorandum provides:

To be conservative, assume that all seven school age children from Bowridge Commons and the two school-age children from 525 Ellendale Avenue would attend the public schools in the Port Chester-Rye Union Free School District. If this is the case, the two affordable housing developments would add a potential nine additional school-age children to the school district's student population. In a school district with a student population of 4,183 students (according to the *NYS District Report Card: Port Chester-Rye Union Free School District 2010-2011*; www.reportcards.nysed.gov) this would be an increase in the student population of 0.22%.

Based on this analysis, the consensus of the Planning Board is that the cumulative number of school age children generated by this project and the nearby development located at 525 Ellendale Avenue would not create a significant impact on the Port Chester-Rye Union Free School District.

4. Impacts to Vegetation

The Applicant's arborist, Allan F. Fenner, Davey Resource Group, submitted a memorandum dated June 26, 2012 which enclosed an inventory and assessment of the trees located on the Property. The inventory included a tree-by-tree protection plan including recommendations and procedures for the protection and care of trees selected for retention.

FP Clark's July 9, 2012 Memorandum contains the following comments:

A survey of existing trees on the site was submitted along with a tree protection plan. According to the tree protection plan, 17 regulated trees would be removed during construction. Pursuant to Chapter 235 of the Village Code, and pending verification by the

Superintendent of Public Works/Village Engineer, eight replacement shade trees are required to be planted to mitigate the loss of mature trees on the site.

In addition, the tree-protection detail shown on Sheet 8 of 10 should be revised to comply with the requirements of Chapter 235 of the Village Code.

The Village Engineer/Superintendent of Public Works reviewed Mr. Fenner's memorandum and the proposed tree protection measures and issued a Memorandum, dated September 13, 2012, which states, "The details and methodology of tree protection are in accordance with Village Code." However, the Memorandum provides the following comments regarding tree replacement:

Sheet 7 shows the appropriate number of trees (16) to be replanted and is in compliance with 235-18-A.

The plans only show 13 hardwood trees being replanted with the rest being Pines or Ornamental species. Applicant shall add 3 more hardwood species trees onsite. Silver Maples will not be allowed in the Village Right of way.

Silver Maple shall be replaced with a different hardwood variety. Silver maples are prone to damage as they mature and create unique maintenance issues long term.

These comments must be addressed by the Applicant.

III. PLANNING BOARD RECOMMENDATIONS

After discussion and consideration of the issues raised by the Village's staff and consultants the Planning Board recommends approval of the Rezoning Petition, Site Plan and Subdivision Applications, provided the following items are satisfactorily addressed:

1. Subdivision Plat. Topographic information pursuant to Village Code §219-30(C) should be added to the *Preliminary Merger and Reapportionment Map Prepared for Bowridge Commons LLC* or the

Applicant should indicate whether a waiver of this requirement is requested.

2. Subdivision Plat. Pursuant to Village Code § 219-30(B), the *Preliminary Merger and Reapportionment Map Prepared for Bowridge Commons LLC* should be revised to include the names of owners of record or properties directly across Bowman Avenue and Barber Place from the proposed subdivision.
3. Barber Place. The Planning Board recommends that the BOT explore the basis for the ESTF's recommendation regarding Barber Place. Based on the current ESTF report, the Planning Board recommends that the width of the roadway at Barber Place should be increased. The ESTF has opined that the current roadway width could impede apparatus staging and resident evacuation in an emergency situation. The width of the roadway could be increased by eliminating the grass buffer strips on either side of the proposed sidewalk at the Barber Place elevation, and relocating the sidewalks closer to the property line. Alternatively, the Planning Board recommends the BOT explore alternatives to the widening of Barber Place.
4. Hazardous Materials. The installation of a vapor barrier and/or a subslab venting system beneath the proposed residential structures may be required as a safeguard against potential vapor intrusion of VOCs. Supplemental environmental testing must be performed for the purposes of characterizing current VOC levels in the subsurface. Soil samples must be collected from no less than five additional on-site locations in the manner set forth in HDR's September 12, 2012 Memorandum. The soil sample to be taken beneath the proposed building footprint closest to the former Mobil station shall be converted to a flush-mounted shallow monitoring well-point, using well construction details that will allow for development and low-flow sampling of VOCs (full list), as set forth in HDR's September 12, 2012 Memorandum.
5. Internal Traffic Circulation. To accompany the painted pavement arrows, a "Do Not Enter" sign must be installed where the angled parking meets the larger parking area.
6. A detail of the concrete driveway apron must be provided.

7. Tree Replacement. Of the 16 replacement trees to be planted, 13 are proposed as hardwoods and 3 are proposed as Pines or Ornamental species. The Applicant shall replace the 3 non-hardwoods with 3 hardwood trees to be approved by the Superintendent of Public Works/Village Engineer. The proposed Silver Maples shall be replaced with a different hardwood variety to be approved by the Superintendent of Public Works/Village Engineer.

Dated: Rye Brook, New York
September 13, 2012

**APPROVED AT THE SEPTEMBER 13, 2012 MEETING
AT THE VILLAGE OF RYE BROOK PLANNING BOARD
BY A VOTE OF 6-0**

ACCEPTING THE REPORT AND RECOMMENDATION

Ayes: [Dominick Accurso](#), [Robert Goodman](#), [John Grzan](#), [Bill Laufer](#), [Amy Schoen](#), [Gary Zuckerman](#)

Nays:

APPROVING THE REFERRAL RESOLUTION

Ayes: [Dominick Accurso](#), [Robert Goodman](#), [John Grzan](#), [Bill Laufer](#), [Amy Schoen](#), [Gary Zuckerman](#)

Nays:

Excused: [Dan Tartaglia](#)