

RESOLUTION

CONSIDERING A LICENSE AGREEMENT FOR THE USE OF PUBLIC STREETS WITH THE OWNERS OF 117 ½ NORTH RIDGE STREET

WHEREAS, Joseph Rocco and Robin Bivona-Rocco, owners of 117 ½ North Ridge Street, designated on the Town of Rye Tax Assessors Map as Section 135.59 Block 1 Lot 36, has requested a license from the Board of Trustees to maintain a retaining wall and driveway currently located in the North Ridge Street right-of-way, which right-of-way is owned by the Village of Rye Brook (“Village Property”), and to enter upon that portion of said Village property to maintain, restore and replace (in-kind) the retaining wall and fence and for no other purpose; and

WHEREAS, the Board of Trustees, pursuant to the State Environmental Quality Review Act (SEQRA), determines the proposed action to be a Type II Action and, accordingly, no further environmental review is required.

NOW THEREFORE BE IT RESOLVED, that the Board of Trustees, upon consideration of the aforementioned request, hereby authorizes the Village to enter into a License Agreement with Joseph Rocco and Robin Bivona-Rocco, as annexed to this Resolution as Exhibit “A”, to maintain the retaining wall and driveway currently located within the North Ridge Street right-of-way, subject to and in accordance with the terms set forth in the attached License Agreement and as may be modified by Village counsel; and

BE IT FURTHER RESOLVED, that the Mayor and Administrator are hereby authorized to execute the License Agreement and deliver all necessary documents to accomplish its purposes.

REVOCABLE LICENSE AGREEMENT

THIS LICENSE AGREEMENT (the “Agreement”), entered into this ___ day of _____, 2016, by and between the Village of Rye Brook (hereinafter referred to as the “Village” or “Licensor”) and Joseph Rocco and Robin Ann Bivona-Rocco (hereinafter referred to as “Licensee”).

I. RECITALS:

1. Licensor is the beneficial owner of the right-of-way known as North Ridge Street in the Village of Rye Brook.

2. Licensee is the beneficial owner of certain property located at 117½ North Ridge Street, Rye Brook, New York, which is identified on the Tax Assessment Map of the Town of Rye as Parcel 135.59-1-36 (the “Property”).

3. Section 182-2 of the Village of Rye Brook Code provides that “no person shall interfere with, take or use any of the property of the village without first obtaining the consent of the Village Mayor, Board of Trustees or Village Administrator.”

4. Licensee has requested from the Board of Trustees a license to maintain a stone retaining wall and portion of a driveway turnaround within the Village right-of-way on North Ridge Street, which are existing at that location.

5. Licensor is willing to grant the permission requested by Licensee subject to the following terms and conditions:

II. AGREEMENT

NOW, THEREFORE, in consideration of the covenants and conditions set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

A. GRANT: Subject to the terms and conditions of this Agreement, and upon the representation from Licensee that he is the owner of the Property, Licensor hereby grants to Licensee an exclusive license (the “License”) to maintain the stone retaining wall and paved driveway turnaround, currently located within the Village right-of-way on North Ridge Street, as more particularly shown on Exhibit “A” attached hereto and made a part hereof (the “License Area”) in accordance with applicable Village Code provisions.

B. TERM: The term of the License shall commence upon the signing of this Agreement by the Mayor and Licensee and shall continue in full force and effect until terminated. This Agreement may be terminated on fifteen (15) days written notice by either

party, without cause. Thereafter, Licensee shall have a reasonable time to remove the fence from the Village Right of way, which period shall not exceed six (6) months from the date of termination.

C. PERMITTED USE: The permitted use of the License Area shall be solely to maintain the currently existing stone retaining wall and driveway turnaround located within the Village right-of-way on North Ridge Street and for the purpose of entering upon the right-of-way to maintain, restore, and replace (in-kind) the stone retaining wall and paved driveway turnaround. No other purpose is permitted. Licensee shall keep the License Area clean and shall repair any damage to the License Area caused by Licensee's use thereof. The stone retaining wall and paved driveway turnaround, as they presently exist and as depicted in Exhibit "A," shall not be modified, enlarged or relocated within the Village right-of-way without prior written approval of the Village Board of Trustees, which approval shall be attached to and become a part of this Agreement.

D. SUPERVISION: Licensee shall be responsible for and take all precautions for the protection of all persons and personal property using the License Area or situated on the perimeter adjacent to or abutting the License Area.

E. INSURANCE: Throughout the term of this Agreement, Licensee and its contractors shall obtain and maintain, at Licensee's sole cost and expense, and keep in force for the benefit of Licensee, insurance policies providing the following coverage:

A comprehensive policy of general public liability insurance, protecting and indemnifying Licensor and Licensee against any and all liabilities and claims for damages to persons or property occasioned on or about any part of the License Area, and all other areas adjacent to the License Area, with such policy to meet the following requirements:

Coverage and Limits	Occurrence – 1988 ISO or equivalent	
	General Aggregate	\$2,000,000
	Products & Completed Operations	\$2,000,000
	Personal & Advertising Injury	\$1,000,000
	Per Occurrence Limit	\$1,000,000
	Fire Damage	\$ 50,000
	Medical Expense	\$ 5,000

Additional Insured Village of Rye Brook, all elected and appointed officials, agents, and employees.

Endorsement showing that this policy is considered primary and non-contributory.

Waiver of Subrogation is the favor of the additional insured.

Notice of Cancellation 30 Days

Evidence **Certificate of Insurance and copy of additional insured endorsement.**

On or before the execution of this Agreement by the parties herein, Licensee shall deliver to Licensor certificates of insurance evidencing all of the coverages required hereunder. Certificates shall provide that thirty (30) days written notice, by registered mail with return receipt requested, prior to cancellation or expiration be given to the Village of Rye Brook. Policies that lapse and/or expire during term of this Agreement shall be recertified and received by the Village of Rye Brook no less than thirty (30) days prior to expiration or cancellation.

All carriers listed in the certificates of insurance shall be A.M. Best Rated A VII or better and be licensed in the State of New York.

The policy shall contain clauses to the effect that such insurance shall be primary without right of contribution of any other insurance carried by or on behalf of the Village with respect to the Village's interests and that such insurance shall not be cancelled, materially changed, or not renewed for any reason, including nonpayment of premium, without 30 days prior written notice to the Village. The Village shall have the option to pay any necessary premiums and charge the cost back to Provider.

Notwithstanding anything to the contrary in this Agreement, Licensee irrevocably waives all claims against the Village for all losses, damages, claims, or expenses resulting from risks that are commercially insurable, but Provider's provision of insurance coverage shall not in any way limit the liability of the Licensee (or its invitees arising under or out of this Agreement) under this Agreement.

Licensee shall not do or permit to be done any act or thing upon the License Area that will invalidate or be in conflict with any insurance policies covering the same. Licensee shall promptly comply with all insurance underwriters, rules, orders, regulations, or requirements relating to such insurance policies, and shall not do or permit anything to be done in or about the License Area which shall increase the rate of insurance on the Property.

F. INDEMNIFICATION: Licensee shall defend, indemnify, protect, and save harmless Licensor and its respective officers, employees, agents, contractors, subcontractors or legal representatives, (the "Licensor Parties") from and against any and all claims, actions, suits, damages, liabilities, costs, and expenses, including, without limitation, reasonable attorneys' fees and disbursements, that: (i) arise from or are in any way connected with the License granted hereunder for the License Area or any portion thereof, unless caused by the acts or omissions of Licensor; (ii) arise from or are in way connected with any

act or omission of Licensee or Licensee's invitees; (iii) result from any default of this Agreement or any provision hereof by Licensee; (iv) result from the presence of Licensee's property or equipment within the License Area; or (v) result from injury to person or property or loss of life sustained in or about the License Area, all regardless of whether such claims are asserted during, or after the term of this Agreement. Licensee's obligations under this paragraph shall survive the revocation or termination of this Agreement.

G. WAIVER OF RESPONSIBILITY: Neither Licensor nor the Licensor Parties shall be liable for, and Licensee waives, all claims for loss or damage, economic or otherwise, to persons or property sustained by Licensee or any person claiming by, through or under Licensee resulting from any accident or occurrence in, on or about the License Area, including, without limitation, claims for loss, theft or damage, resulting from any cause whatsoever, except for willful misconduct by Licensor. To the maximum extent permitted by law, Licensee shall use and occupy the License Area at Licensee's own risk. Licensor makes no representation, warranty or guarantee with respect to the suitability of the License Area for the purposes for which this License is issued.

H. VACATION OF PREMISES: Upon termination of this Agreement, Licensee shall promptly (i) refrain from using the License Area, and (ii) return the License Area to its original condition prior to the Permitted Use within the timeframe set forth about.

I. GOVERNING LAW: This Agreement shall be governed and construed in accordance with the laws of the State of New York and shall not be modified, altered, or amended except in writing signed by the parties hereto.

J. NOTICES: All notices or other communications provided for under this Agreement shall be in writing, signed by the party giving the same, and shall be deemed properly given and received (i) when actually delivered and received, if personally delivered; or (ii) three (3) business days after being mailed, if sent by certified mail, postage prepaid, return receipt requested; or (iii) one (1) business day after being sent by overnight delivery service, all to the following addresses:

If to Licensor: Village of Rye Brook
938 King Street
Rye Brook, New York 10573
Attention: Christopher Bradbury, Village Administrator

If to Licensee: Joseph Rocco & Robin Ann Bivona-Rocco
117½ North Ridge Street
Rye Brook, New York 10573

Each party shall have the right to designate other or additional addresses or addressees for the delivery of notices, by giving notice of the same in the manner as previously set forth herein.

K. SEVERABILITY. Should any term or provision of this Agreement be declared to be void, invalid, illegal or unenforceable, for any reason, by the adjudication of any court of other tribunal having jurisdiction over the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the date first written above.

LICENSOR, VILLAGE OF RYE BROOK

By: _____

Name: _____

Title: _____

LICENSEE

Joseph Rocco

Robin Ann Bivona-Rocco

EXHIBIT A

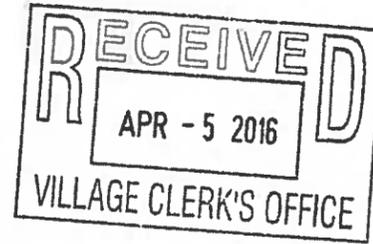
License Area

**Survey of Property Prepared for John B. Colangelo,
prepared by Ahneman Kirby Engineers, Surveyors, Planners,
dated December 10, 2015**

117 1/2 N. Ridge Street
Rye Brook, NY 10573

March 30, 2016

Mayor Paul Rosenberg &
Members of the Village Board of Trustees
Village of Rye Brook
938 King Street
Rye Brook, NY 10573



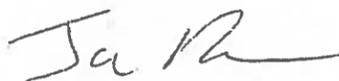
Dear Mayor & Members of the Village Board:

We are the owners of 117 1/2 N. Ridge Street, Rye Brook, NY, which we purchased in December of 2015 from Wells Fargo Bank, which had foreclosed on the prior owner. The purchase contract from the bank was very restrictive and we were obligated to purchase the property in its "as is" condition. Prior to closing, our attorney met with the Building Inspector and he was informed that there were a few violations, which we undertook to resolve once we were the owners of the property. Unfortunately, neither the bank nor the Building Department had a survey, and it was not until after closing when we obtained a new survey which indicated that the retaining wall and driveway encroached upon Village property. Apparently the prior owner had started the process, with a building permit, to construct a driveway and retaining wall, but the plan submitted was different from what was actually built. This did not come to our attention until after closing.

One of the reasons we purchased this home was because of the beautiful stonework on the front of the house, the stone wall in front of the residence and the stone driveway with a convenient "turn around" in the driveway, which allowed us to avoid backing out of the driveway onto a very busy North Ridge Street.

Therefore, the purpose of this letter is to request that the Board consider granting permission to maintain the retaining wall and driveway which is on the Village right of way. We understand that there is a procedure under the Rye Brook Village Code for you to grant us this permission, and we hereby request your consideration in this regard.

Very truly yours,


JOSEPH ROCCO


ROBIN BIVONA-ROCCO

Joseph Rocco 646-296-6264
Robin Rocco 914 484 - 0406



VILLAGE OF RYE BROOK

MAYOR
Paul S. Rosenberg

938 King Street, Rye Brook, N.Y. 10573
(914) 939-0668 Fax (914) 939-5801
www.ryebrook.org

ADMINISTRATOR
Christopher J. Bradbury

TRUSTEES
Susan R. Epstein
David M. Heiser
Jason A. Klein
Jeffrey B. Rednick

**BUILDING & FIRE
INSPECTOR**
Michael J. Izzo

NOTICE OF DISAPPROVAL

Application #16-007

January 28, 2016

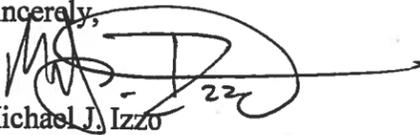
Joseph Rocco
117 ½ North Ridge Street
Rye Brook, New York 10573

PLEASE TAKE NOTICE that your application for a Certificate of Occupancy dated January 27, 2016, submitted in connection with Building Permit #3254 issued 3/28/2006, for the premises located at 117 ½ North Ridge Street, Parcel ID# 135.59-1-36, has been disapproved because of non-compliance with the following section(s) of the Code of the Village of Rye Brook:

§ 182-2 **Permission from The Mayor, Board of Trustees or Village Administrator required for use of Village property. The applicant proposes to legalize the front retaining wall installed partially on Village property without such permission.**

Please relocate the subject retaining wall such that it is removed from Village property and located entirely on your property in conformance with Village Code, or submit a request in writing to the Village Mayor, Board of Trustees and the Village Administrator for permission for use of Village property.

Sincerely,


Michael J. Izzo
Building & Fire Inspector
mizzo@ryebrook.org

