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REPLY TO:

Tarrytown office

Honorable Mayor Paul S. Rosenberg
and Members of the Village Board
Village of Rye Brook
938 King Street
Rye Brook, NY 10573

RE: Opposition to proposed development at
259 North Ridge Street, Rye Brook, NY

Dear Honorable Mayor Rosenberg
and Members of the Village Board:

I represent Gustavo P. Carmona, Lisa Carmona, Deborah V. Carroll, Stephen C. Effler, Donald A. Cassone, Rose Ann Ciancio, Steven C. Grossman, Carmela M. Luccarelli, Peter A. Pitocco, Maureen N. Pitocco, Kathleen Ann Schwartz, Jicheng Tang, Hue Xu, Russell Tenenzapf, Michelle Tenenzapf, Bruce Yawitz, Susan Yawitz, Dan Zhu, Yilei Chen (collectively, the "North Ridge Neighbors") in opposition to the proposed development at 259 North Ridge Street, Rye Brook, New York ("Property"). The North Ridge Neighbors all own property adjacent to, across the street or within very close proximity to the Property and, therefore, have a significant interest in the proposal.

At the outset, please note that the North Ridge Neighbors do not oppose development of the Property or affordable housing. The North Ridge Neighbors do oppose, however, the proposed excessive development plan that is not in compliance with numerous provisions of the Village Code, is not in keeping with the character of the neighborhood, and which will create significant environmental and safety impacts. Moreover, the administrative record before this Honorable Board is wholly deficient under the requirements of the Zoning Code and the State Environmental Quality Review Act ("SEQRA") as more fully set forth below.

It must be stated at the outset that the developer is attempting to employ a classic diversionary zoning tactic. The developer initially proposed a plan that was entirely inconsistent with the Zoning Code. After being confronted with numerous concerns by the residents, the Planning Board, the Building and Fire Inspector, and the Village consultants, the

developer has now proposed a plan that it claims is less intrusive in a number of respects. While we agree the plan is in some ways less intrusive (but more intrusive in any other ways), the developer's overall plan remains wholly inconsistent with the Zoning Code, the character of the neighborhood and will still result in the same environmental and safety impacts. We urge the Village Board to please not be fooled by this tactic. We also respectfully urge the Board to properly and diligently review the new plan on its own merit, and not simply compare it to the prior excessive plan. In other words, the new plan is still a 10 pound project in a 5 pound bag, and it is not in and of itself acceptable merely because the initial proposal was a 20 pound project in a 5 pound bag.

Based upon the publically available documents on the Village Website, I respectfully offer the following comments:

1. Required Compliance with the State Environmental Quality Review Act

The record is wholly inadequate for the Village Board to take a hard look at the relevant environmental issues and make a reasoned elaboration whether there are any potential significant adverse environmental impacts. What we do know is that the Property is encumbered with wetlands and steep slopes and is located on a Scenic Road. The developer has now provided an entirely new plan that requires a full analysis. Yet the developer has failed to provide a revised Environmental Assessment Form ("EAF"). We also note that there are conflicting EAFs in the record. For example, there is a Short EAF, dated July 28, 2015. This EAF contains serious errors and misrepresentations. Part 1, Item 5 states incorrectly that the use is a permitted use. Obviously this is a false statement since a rezoning petition has been filed. The record also contains an unsigned Full EAF, dated January 7, 2016 and an EAF Mapper Summary, dated January 14, 2016. It is unclear whether the EAF was correctly prepared using the DEC Mapper Program, particularly given the fact that the EAF is unsigned and thus, wholly deficient. We also note that the site plan application forms are unsigned by both the developer and the Property owner and are also facially deficient.

Moreover, the record is devoid of a Visual EAF Addendum, even though the project is on a Scenic Road. Likewise, the records contains visual renderings of the original project, but fails to contain any such renderings of the new revised project. It must be noted that the visual renderings of the original project are wholly misleading and insufficient for the Board to properly analyze potential visual impacts on the Scenic Road and the neighborhood. A proper methodology should be employed by the developer, including the selection of viewpoints, a balloon test to confirm the height and location of the proposed buildings, and proper preparation of accurate renderings. Proposed walls, fences and landscaping, including the post construction grading, must be properly included in the renderings. Signage, any Radar Speed Display light, cross walks, new sidewalks and guard rails must be included to analyze the impacts to the Scenic Road. Multiple viewpoints of the entire 3 lots are essential to a complete SEQRA analysis. The North Ridge Residents are available to assist the Village Planning Consultant to select the required viewpoints for the visual renderings.

The project also proposes numerous components in the wetland buffer including all three buildings. The Board must require that the wetland delineation be surveyed and a jurisdictional determination be obtained from the New York State Department of Environmental Conservation and the United States Army Corps of Engineers. A wetland impact report must also be provided by the developer and reviewed by the Village consultants. Likewise, a fully engineered storm water management plan based on the new proposal must be submitted and fully reviewed. See Memo from Dolpf Rotfeld Engineering, PC, dated October 13, 2016.

There are also significant concerns with respect to the impact on property values given the design and location of the project. We respectfully request that the Village Board retain an independent appraiser to conduct a property value impact report at the expense of the developer under Chapter 47 of the Village Code.

We respectfully request that the Board require the developer to submit a correct and up to date long EAF, with Visual Addendum and all necessary supporting documentation, including without limitation visual renderings, a fully engineered storm water management plan, a wetland impact report, updated tree removal report and landscaping plan. Once this information is submitted, it should be reviewed by the Planning Board, Board of Architectural Review, and the Village consultants. Moreover, we respectfully request sufficient time to retain our own experts to review the updated documentation and provide comments.

The Village Board must be cognizant of its significant responsibility in this matter. As Lead agency, it must consider all of the relevant potential impacts, and not just the Lot 1 impacts. For example, the new building on Lot 3 is entirely within a wetland buffer. While the Planning Board will hopefully review this issue, the subdivision and SEQRA determination is setting in motion the placement of this building entirely within the wetland buffer. We also urge the Village Board to bear in mind that the developer is seeking a fully discretionary approval by requesting the rezoning. Moreover, the developer is not merely seeking approval for affordable housing. Rather, it is also attempting to reap a significant windfall by obtaining a three lot subdivision with two other residences on an environmentally encumbered lot located on a Scenic Road.

2. Traffic and Safety Issues

Pursuant to both the Village Code and SEQRA, the Village Board must reject this proposal on the basis of traffic and safety issues.

First, the record is devoid of a full traffic and safety study. The new proposal includes merely one sight line delineation (even though there are 3 driveways and 6 relevant sight lines), and the placement of boxes in the driveway on Lot 1 to represent a fire truck. This is wholly inadequate.

In fact, the Village's own personnel and consultants' questions and concerns remain unanswered. For example, the Memorandum from Michael Izzo, Building and Fire Inspector, dated October 5, 2016 states that "there is insufficient emergency access to the building from the rear, and no emergency access from the front or from either side of the building" and confirms that the plans do not "show compliance with the fire apparatus minimum required for turning radius. . . ." Equally troubling are the memoranda from Frederick P. Clark Associates, Inc. ("FPC") dated October 7, 2016 and November 3, 2016. The October 7th memorandum states that "the Applicant has addressed the **majority** of the issues regarding the adequate provision of sight lines from the proposed driveway to the multi-family development." There is no indication how many issues remain unresolved. Are 49% of the issues unresolved? And what is the nature of the unresolved issues? Maximizing the sight lines and improving the sight lines from the original plan is simply not good enough. Nowhere is it stated, either by the developer or the Village consultants that the proposal is safe! Worse yet, the project changes have actually made the project more non-compliant as explained below since the Property is on a Scenic Road. There still also remains the issue of what signage is proposed (which will further degrade the aesthetic value of the scenic road), and whether a Radar Speed Display light, cross walk, new sidewalks and guard rails will be implemented, let alone the nature of the visual impact on the Scenic Road. Again, the record is devoid of the necessary information for the Village Board to take a hard look at the relevant environmental issues.

FPC also raises the same concerns as the Building Inspector by stating in the October 7th memorandum that "there remains a concern that a fire truck may not be able to perform a turning maneuver to exit the site head first as it is depicted on the turning templates." FPC also raises concerns about even smaller emergency vehicles and/or sanitation and waste disposal vehicles and recommends a redesign of the parking lot. The parking lot fails to consider screening for garbage collection and fails to indicate snow stockpiling space.

On November 3rd, FPC went on to note that the slope of the driveway is wholly inconsistent with the maximum allowed under the Village Code, stating that in the "**interest of safety**, the Applicant should consider modifying the proposed driveway in order to reduce the maximum gradient to 10 percent or less for its entirety." In other words, the drive way is completely unsafe! To the extent the developer is able to propose a grading plan to meet the 10 percent requirement, it is respectfully submitted that such extensive grading will violate the Scenic Road Overlay District buffer area requirements.

It is also important to note that the North Ridge Neighbors adamantly oppose the proposed narrowing and realignment of West Ridge Drive. West Ridge Drive is routinely used to divert emergency traffic in case of an emergency on North Ridge Street. The proposed plan will create an additional safety issue. Moreover, the developer's plans are in error. The driveway of 3 West Ridge Drive is completely misplaced on the plans, thereby calling into question the entire realignment design. A full analysis of this portion of the proposal is required.

3. Failure to Comply with the Scenic Road Regulations

All of the developer's engineering gymnastics attempting to make the driveways and sight lines work have resulted in the project being wholly incompatible with the Scenic Road Overlay District Regulations.

First, the proposed apartment building on Lot 1 fails to meet the underlying 40 foot setback requirement, or the required 60 foot Scenic Overlay setback. In fact, the building is a mere 30 feet from the front Property line. Likewise, the expanded existing building on Lot 2 does not meet the required 40 or 60 foot setback requirement. Accordingly, numerous variances are required from the Zoning Board of Appeals. To the extent the Village Board intends to waive these requirements, such spot zoning would not only be illegal but would be an affront to the property owners that have been required to comply with the Scenic Road Overlay District Regulations since they were enacted. The Village Board should refer this proposal to the Zoning Board Appeals for the necessary variances prior to entertaining the proposed rezoning, subdivision and site plan applications. In any event, these significant setback issues further demonstrate that the project is simply wrong for this Property.

Second, Section 250-7.F.1 states:

Purpose. The Scenic Roads Overlay District is hereby established for the purpose of preserving the Village of Rye Brook's historic resources, stone walls, natural features and views from its roadways and other public areas **by guiding new development away from those areas** and onto lands which are not as scenic and historically significant. The view experienced from these areas contributes significantly to the overall rural character of the Village, an attribute the community seeks to preserve and enhance while accommodating growth and change. (Emphasis supplied).

It makes no logical sense to squeeze an oversized noncompliant building onto a lot encumbered with wetlands and steep slopes simply in the name of affordable housing. It makes even less sense when the lot is in a Scenic Overlay District where the Zoning Code expressly directs that development be steered away.

Third, Section 250-7.F.6 states:

Criteria for review and approval. The additional regulations set forth below supplement, but do not replace, the use and bulk regulations otherwise applicable to the underlying zoning districts. In all residential districts, the minimum front yard setback shall be determined by the requirements of the Scenic Roads Overlay District or the height/setback ratio of the

underlying zoning district, whichever is more restrictive.

(a) The structure or alteration **shall be architecturally compatible** with surrounding structures and the important scenic and natural features of the site shall be preserved.

(b) The minimum front yard setback requirement for all structures, as set forth for the underlying zoning district, shall be increased by a factor of 1.5, except that the front yard setbacks of all structures either existing or for which a building permit had been issued at the time of the adoption of the Scenic Roads Overlay District on August 10, 2004, shall be deemed to be in conformance with the Scenic Roads Overlay District front yard setback requirement. Notwithstanding any other provision of this chapter, in the case of a lot abutting two or more streets, the increased front yard setback requirement shall apply only to front yards abutting a street located within the Scenic Roads Overlay District.

(c) **A thirty-five-foot-wide area, measured perpendicularly from the front property line and running the length of the lot frontage shall remain as a vegetative buffer.** Notwithstanding any other provision of this chapter, in the case of a lot abutting two or more streets, the vegetative buffer requirement shall apply only to frontages abutting a street located within the Scenic Roads Overlay District. The front yard buffer shall be managed by the property owner in a way that preserves significant, healthy existing vegetation, plant specimens, landforms and water features and nurtures tree planting and other natural landscaping efforts; creates a dense landscaped buffer; preserves stone walls or other architectural features; and/or ensures the protection of visual buffers. Where existing trees and vegetation are proposed to be removed, sufficient landscaping and tree planting will be undertaken to mitigate visual impacts and the loss of existing vegetation.

[1] **Use of native species shall be encouraged.**

[2] Landscape and plantings shall be used to screen structures and parking areas visible from the road. **Trees should be planted in random clusters, not in rows,** to complement the appearance of natural tree stands. The relative heights of trees at planting should be proportional to their relative heights at maturity.

[3] **No cutting of trees exceeding eight or more inches in diameter at breast height (DBH) will be permitted in accordance with Chapter 235 of the Village Code.**

(d) A conservation easement may be placed on the thirty-five-foot-wide front yard buffer to protect the vegetative

buffer.

(e) Existing natural and constructed features, including but not limited to, rock outcrops, stonewalls, gates, and entrance piers will be preserved and incorporated into development plans. If new stonewalls are to be erected, they will match, as closely as possible, existing masonry, stone type and wall heights of existing walls.

(f) Any new utility equipment installed within a designated road shall be properly screened so as to insure the character and continuity of the road is not compromised in accordance with § 215-5 of the Village Code.

(g) Parking areas shall not be located within the front yard buffer and shall be placed to minimize encroachment upon areas and terrain that have qualities of natural beauty.

(h) Any grading or earth moving operation shall be conducted so that the final, postdevelopment contours appear to be consistent with the predevelopment terrain, both on and adjacent to building sites. Within the front yard landscape buffer, existing grade shall not be altered. (Emphasis supplied).

A careful review of the new plan shows that all of the highlighted foregoing requirements are violated on all 3 lots. For example, there will be significant grading in the 35 foot buffer area. No natural vegetation will be preserved and it appears that the trees that are required to be preserved will be removed, although a correct plan is required to evaluate these impacts. Most importantly, the building and parking area will violate the 35 foot buffer area and, as noted above, the required building setback requirement. A retaining wall and vinyl fence will violate the buffer area. A single file row of non-native evergreens is a disastrous attempt at landscaping. And significant grading will be required in a hapless attempt to improve the unsafe layout of the driveway. Finally, and most importantly, the proposed multi-unit oversized building will not be architecturally compatible with the neighborhood.

Simply put, the site plan design is poorly thought out and in clear violation of numerous Village Code provisions.

4. Failure to Comply with the Fair and Affordable Housing District Regulations

The project even fails to comply with the overly lax Fair and Affordable Housing District Regulations. Section 250-26.1.F.4 states:

Within new one- or two-family developments and existing one- or two-family zoning districts, the AFFH Units may be one-,

two- or multi-family homes. All such units shall be indistinguishable in appearance, siting and exterior design from the market-rate one-family homes in the development or the one- or two-family homes in the existing neighborhood, to the greatest degree possible. Interior finishes and furnishings may differ in quality from those of the market-rate units. (Emphasis supplied).

It is obvious that the 5 unit apartment building simply is not indistinguishable in either appearance, siting or exterior design from the existing neighborhood. The developer has conceded that the design is a function of its desire to use cheap prefabricated building modules. Attached hereto as Exhibit 1 is a summary of the square footage of the home sizes in the neighborhood as previously provided to the Board by Mr. Effler. The 24 houses studied have an average square footage of 2171 square feet with a footprint of 1522 square feet. In comparison, the multi-unit apartment building has a 2 story square footage of over 6300 square feet and a foot print of 3152! It is unclear based on the architectural drawings, which the developer failed to have signed or sealed, whether the proposed building is even larger in size. It appears that the building actually has a full height basement and attic space, thereby giving the appearance of a 4-story building in a 2-story neighborhood.

The commercial scale parking lot further exacerbates the impacts. The developer has refused to consider the Planning Board's request that attached garages be used an alternative to the proposed large scale parking lot, which in and of itself results in visual impacts and storm water issues. Again, the use of cheap modular construction seems to be driving the developer's refusal to consider reasonable alternative solutions to mitigate significant adverse impacts. Accordingly, a Positive Declaration under SEQRA should be issued so that a full review of alternatives may be properly conducted.

Pursuant to Section 250-26.1.E.3 this new plan must be referred back to the Planning Board for a full review and written report. Failure to do so will be in violation of the express procedures of the Code.

5. The Site Plan for Lot 1 Must be Properly Reviewed by the Village Board

Section 250-7.F.2.c of the Code requires that the project be reviewed by the Planning Board, Architectural Review Board and Tree Preservation Committee. As noted above, setback variances from the Zoning Board are also required. Based on the numerous plan changes since the project was formally before the Planning Board, this project must be referred back to the Planning Board for review and written report, and the matter should be removed from the Village Board agenda until this is accomplished.

Section 250-7.F.2.e of the Code states that "landscape planning should be an integral component of all subdivision and site plan review and approval." The current plan simply lacks a proper landscape plan. Any decision made on this plan would be arbitrary and

capricious.

Numerous other issues remain unresolved. The developer should be required to submit a proposed tree preservation easement. As noted by the Village Engineer the design of the numerous retaining walls remains unresolved. On Lot 3 there are extensive 6 foot high retaining walls and on Lot 1 there are 5 foot high retaining walls throughout the site. What will they look like, and what will the top of each wall will be finished with for safety? How will they be properly landscaped? All of these issues must be addressed before any approvals are considered.

As noted earlier, a full visual analysis must be conducted based on a proper methodology.

Given the wetland buffer impacts and numerous retaining walls and fences, and the fact that the Scenic Road regulations require a 35 foot buffer, a five year landscape bond is insufficient. The bond must be perpetual and the landscaping must be maintained for the life of the project.

The record is also devoid of documentation to show compliance with numerous other code requirements. For example, there has been no discussion as to a Performance Guaranty as required by Section 209-9 of the Code and no discussion of the required parkland or fee in lieu as required under Section 209-14 of the Code.

Pursuant to Chapter 8 of the Village Code, this matter will ultimately be subject to the jurisdiction of the Board of Architectural Review. Based on the excessive dissimilarity of the proposed multi-unit building on Lot 1, under Section 8-9.A.2 the Board of Architectural Review should be an involved agency and consulted with at this time.

Finally, we are concerned regarding the validity of the materials that have been submitted by the developer and accepted by the Village. Section 7209 of the New York State Education Law, entitled "Special Provisions" sets forth the requirements for stamping and sealing plans for submission to public officials. Section 7209 contains the following provision:

All plans, specifications, plats and reports relating to the construction or alteration of buildings or structures prepared by such professional engineer and all plans, specifications, plats and reports prepared by such land surveyor or by a full-time or part-time subordinate under his supervision, shall be stamped with such seal and shall also be signed, on the original with the personal signature of such professional engineer or land surveyor when filed with public officials. No official of this state, or of any city, county, town or village therein, charged with the enforcement of laws, ordinances or regulations shall

accept or approve any plans or specifications that are not stamped.

N.Y. Educ. Law § 7209 (McKinney).

As such, the clear language of this Section of the New York State Education Law compels that all plans “filed with public officials” must be stamped and sealed. Moreover, any such official is barred from accepting or approving any “plans or specifications that are not stamped.” As noted earlier, there are a number of unsigned documents and the architectural plans are not signed and sealed. These filings must be rejected by the Village.

Conclusion

It is commendable that the Village is using its best effort to promote affordable housing, but this is simply the wrong project on the wrong lot. Affordable housing should not be used as a way for a developer to gain a windfall when attempting to develop an environmentally encumbered lot on a Scenic Road. The Property was historically developed with a single residence for a reason. The Village Board must insist that the issues raised herein and the issues previously raised by the Planning Board, Building and Fire Inspector and Village Consultants be addressed by the developer. Moreover, if the project cannot comply with the Village Code, it must be rejected.

We respectfully request that the Village direct the developer and Village Consultants to provide a copy of all future submissions and comments to my Tarrytown office by email at RGaudioso@snyderlaw.net.

Thank you for your consideration. Please make this letter a part of the official administrative record. I look forward to speaking at the December 13, 2016 public hearing.

Respectfully submitted,



Robert D. Gaudioso

RDG/dac

cc: North Ridge Neighbors
Village Planning Board

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EXHIBIT 1

Houses near 259 North Ridge Street

Address	Sq. Ft.	Home Style	Footprint
247	2066	2-story (divided by 2)	1033
251	2407	2-story	1204
255	2443	2-story	1222
257	2772	Split (divided by 3/2)	1848
267	2568	Ranch (100 %)	2568
271	1880	Split	1253
275	3118	2-story	1559
279	1904	Ranch	1904
283	1928	Ranch	1928
287	2525	2-story	1263
298	1504	Ranch	1504
294	1755	Ranch	1755
290	1694	Ranch	1694
286	2093	Ranch	2093
282	3186	2-story	1593
278	1700	Ranch	1700
274	2016	2-story	1008
270	2480	2-story	1240
266	1395	Ranch	1395
262	2080	Ranch	1040
258	1974	Split	1316
254	2298	Split	1532
250	2610	Split	1740
West Ridge Street			
3	1714	Split	1143
24 Houses	52,110 sq ft - Average = 2171	Estimated Total Footprint	36,535 Average 1522

Proposed Multiple Dwelling 2500 x 2 stories 5000 square feet 2.3 times bigger
 Biggest square feet, second biggest footprint 2500 footprint 1.64 times bigger Average ratio 1.97/1