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December 12, 2016

By Hand Delivery

Hon. Paul S. Rosenberg
Mayor of the Village of Rye Brook
and Members of the Village Board
Village of Rye Brook
938 King Street
Rye Brook, New York 10573

■ Also admitted in D.C.
● Also admitted in CT
▲ Also admitted in NJ

Re: 259 North Ridge Street

Dear Mayor Rosenberg and Members of the Village Board:

This Firm represents Kami and Craig Katz, the owners of 16 Eagles Bluff, as well as Sabrina Lanosa and Daniel Otero, the owners of 14 Eagles Bluff (collectively, the “Neighbors”), in connection with their concerns about the proposed 3-lot subdivision and development of 259 North Ridge Street (the “Project”). The Neighbors’ homes are located just steps away from proposed Lot 1, which, under the current development scheme, would be re-zoned and granted several zoning waivers to permit 5 affordable units in a large building, together with a commercial-style, 14-space asphalt parking lot, plus unsightly retaining walls and so-called privacy fencing and landscaping, all along a Village-designated “Scenic Road.”

As stated previously, the Neighbors are not against affordable housing at this site if the overall 3-lot subdivision Project can be designed in an environmentally-sensitive way that avoids visual and other significant adverse environmental impacts, “integrates” the affordable units and associated parking into the fabric of their existing residential neighborhood, and renders the units and parking “indistinguishable in appearance” from the surrounding market-rate homes. See Village Code § 25-26.1F(4).

The Project does not come close to achieving these objectives and, therefore, cannot be lawfully approved as currently proposed under the Village's FAH and other applicable regulations, as well as SEQRA. The Project is totally inconsistent with the pattern of development and character of this established single-family residential community, fails to satisfy the relevant Village Code standards governing your Board's consideration of the requested zoning waivers, and does not justify the issuance of a Negative Declaration under SEQRA (which requires a finding that there will be no significant adverse impacts).

We urge the Village Board and Planning Board to review this submission package prior to tomorrow's meeting. We would have submitted these materials sooner, but kept needing to revise them in response to the continuous posting of new information last week.

Further Technical Analysis Required, Including An Alternatives Study, To Evaluate Significant Community Character And Other Adverse Environmental Impacts

There are several technical areas of environmental concern that require additional study.

We respectfully refer the Village to the enclosed Technical Reports prepared by Maximilian A. Stach, AICP, Vice President of Turner Miller Group, dated December 12, 2016 (the "Turner Report"), and Timothy L. Cronin, III, P.E., President of Cronin Engineering & Consulting, P.C., dated December 12, 2016 (the "Cronin Report"). The Turner Report describes the Project's incompatibility with community character, and suggests by way of example certain design changes (not meant to be an exhaustive list) that the Applicant should consider to mitigate this significant adverse impact. The Turner Report also responds to the unsubstantiated December 2nd Memorandum submitted by the Applicant's architect.

The Cronin Report identifies fatal evidentiary gaps in this Board's Record with respect to stormwater management, visual impacts, site stability, sight distance, wetlands, and other technical areas of environmental concern, which must be addressed. The Applicant must be required to submit a compliant stormwater management plan, visual impact analyses to demonstrate realistic views of the Project from key vantage points, wetlands mitigation and site access plans for Lot 3, and other information highlighted in the Cronin Report, as well as the Memorandum prepared by Dolph Rotfeld Engineering, P.C., dated December 6, 2016 (the "Rotfeld Memorandum"). Without all of this key information, neither the Village Board nor the public can meaningfully review the Project's potential significant adverse environmental impacts.¹

¹ The insightful, legitimate comments set forth in the Turner and Cronin Reports also prove that the Neighbors' concerns are far from NIMBYism, as unfortunately one commenter recently opined. Taking aim at the residents most impacted by this poorly designed development scheme and its commercial-style parking lot misses the mark. The issues raised by the Neighbors and their professional consultants fit

Accordingly, in order to satisfy the “hard look” legal standard under SEQRA and the Village’s own FAH regulations, the Village Board must require the Applicant to further study alternative densities, building layouts, and parking designs (including garages) consistent with, at a minimum, the parameters suggested in the Turner Report, and the comments of Frederick P. Clark Associates, Inc. (“FP Clark”) in its December 8th Memorandum (the “FP Clark Memorandum”).² This is not the first time the Village’s Consultants and Planning Board have recommended parking garages within the units. It is impossible to determine which density, lot and building/parking configuration may be appropriate for this overall site, which, again, is located in an already established single-family residential community and constrained by wetlands and steep slopes, until other alternatives are presented that address the comments raised by the Neighbors’ and Village’s professional consultants, and are vetted by the Village and public.³

The Applicant’s obvious attempt to avoid such scrutiny by summarily dismissing the comments of FP Clark out of hand, without providing any drawings, plans, or other evidence to substantiate its claims, falls well short of satisfying the applicable legal standards. It is presumptuous, at best, for the Applicant to decide what designs may or may not be “well received” by the Village, Neighbors and other members of the public without providing the critical information necessary to allow all the interested stakeholders to perform a meaningful analysis, and make an informed decision. (Neuringer Memo. at 2). The Applicant essentially gave an unyielding “no” to each and every one of FP Clark’s comments while lacking any verifiable supporting evidence.

Requested Waivers Are Not Warranted Under FAH Regulations

The zoning waivers required for this Project may not be lawfully granted unless and until the relevant Village Code criteria are satisfied, including, ensuring that the Project is in “harmony” with community character, and would result in “orderly development.”

squarely within the realm of reasonable considerations for any subdivision application and SEQRA review. Indeed, the Village’s own consultants have raised many similar concerns!

² The FP Clark Memorandum specifically recommends “further revision of the site plan to eliminate or reduce impacts to the scenic road and the neighbors to the west of the site.” (FP Clark Memo. at 7). This includes “*a reduction in the number of units proposed or breaking up the units into two smaller buildings.*” *Id.* (emphasis added).

³ It is worth reminding the Board that the Village’s own Affordable Housing Discussion Paper, prepared by FP Clark, dated January 11, 2011, identified several “disadvantages” with the potential development of this site for a “*limited* number of residential units.” Affordable Housing Discussion Paper at 6 (emphasis added). Such disadvantages include that the site is “far from shopping and public transportation; it has many steep slopes within the site; access to Ridge Street is also constrained by steep slopes; it could not be developed under current zoning; the site . . . contain[s] wetland.” *Id.*

Under the FAH regulations, the applicable dimensional and bulk requirements shall be the same as those of a property's underlying zoning designation (here, R-15), "except as modified or waived by the Board of Trustees." Village Code § 250-26.1F(3)(a). There is no question that waivers are required to permit a density of 5 residential units on proposed Lot 1, as well as to modify the front yard setback and vegetative buffer requirements under the Scenic Roads Overlay District, as confirmed in the FP Clark Memorandum.⁴

The Village Board may grant a "waiver" only after "balancing important concerns of the community's health, safety and welfare." Id. § 250-26.1F(3)(b). Of key significance here, several of the relevant criteria relate specifically to community character-related impacts (see Turner Report and FP Clark Memorandum), as well as adverse environmental impacts in general (see Turner and Cronin Reports, FP Clark Memorandum, and Rotfeld Memorandum):

[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;

[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; and

[7] Adverse environmental impacts.

Id. § 250-26.1F(3)(b)[3], [4], [6] & [7] (emphasis added).

As such, the Project, as currently designed, fails to qualify for the necessary waiver based upon the aforementioned criteria, and in light of the various professional consultants' comments.⁵

⁴ This is true despite the Applicant's curious protestation that the Project "complies with appropriate sections of the zoning code and no variances are required." (Neuringer Memo. at 1).

⁵ It is also worth highlighting that another criteria is "[w]hether the requested modification of waiver is the *minimum necessary* to maintain the economic viability of the development proposal." Id. § 250-26.1F(3)(b)[8] (emphasis added). The Applicant previously represented that waivers requested in connection with "eight residential units" were the "minimum necessary." (Neuringer Memo, dated May 15, 2015 at 2). Now, when faced with the prospect of further reducing density pursuant to FP Clark's recommendations, the Applicant replied that "further reductions would not be economically feasible." (Neuringer Memo. at 1). The Village must require "dollars and cents" evidence to be able to meaningfully

Conclusion

The Village must not be distracted by the Applicant's claims that it has proposed a modified plan that represents a "significant reduction [compared] to what was contained in [its] original scheme." (Neuringer Memo. at 3). The original proposal was unrealistic from the outset, and is not the appropriate benchmark. The controlling legal standard under SEQRA is that the Project's adverse environmental impacts must be minimized to the maximum extent practicable. There remains much work to be done – as set forth in the Turner Report, Cronin Report, and the Village Consultants' Memoranda – to meet this burden.

Respectfully submitted,

ZARIN & STEINMETZ

By: 

Brad K. Schwartz

cc: Village of Rye Brook Planning Board
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Christopher Bradbury, Village Administrator/Clerk
Robert D. Gaudio, Esq.
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assess the Applicant's claims to the extent it relies upon "economic viability" for outright dismissing potential improvements to the Project.