

**CITY OF RYE  
1051 BOSTON POST ROAD  
RYE, NY 10580  
AMENDED AGENDA**

**REGULAR MEETING OF THE CITY  
COUNCIL VIA ZOOM CONFERENCE  
Wednesday, May 13, 2020  
5:30 p.m.**

*PURSUANT TO GOVERNOR CUOMO'S EXECUTIVE ORDER No. 202.1, REQUIREMENTS UNDER THE OPEN MEETINGS LAW HAVE BEEN SUSPENDED AND PUBLIC BODIES MAY MEET WITHOUT ALLOWING THE PUBLIC TO BE PHYSICALLY PRESENT. FOR THE HEALTH AND SAFETY OF ALL, CITY HALL WILL REMAIN CLOSED. THE MEETING WILL BE HELD VIA ZOOM VIDEO-CONFERENCING WITH NO IN-PERSON LOCATION AND WILL BE BROADCAST ON THE CITY WEBSITE. A FULL TRANSCRIPT OF THE MEETING WILL BE MADE AVAILABLE AT A FUTURE DATE.*

*RESIDENTS MAY EMAIL COMMENTS REGARDING THE PUBLIC HEARING TO: PUBLICHEARINGCOMMENTS@RYENY.GOV. ALL COMMENTS MUST BE RECEIVED BY 4:15 PM ON MAY 13, 2020. THE SUBJECT OF THE EMAIL NEEDS TO READ, "OSBORN ZONING CHANGE". PLEASE INCLUDE YOUR NAME AND ADDRESS.*

*TO PARTICIPATE IN THE PUBLIC HEARING, PLEASE ATTEND THE MEETING VIA ZOOM VIA THIS LINK:*

<https://zoom.us/j/92839711353?pwd=dDZTVjdyM0trSE1Qc2dqQ2hMcWNxUT09>

Password: 815298

Or Telephone:

US: (646) 558-8656 or (312) 626-6799 or (301) 715-8592 or (253) 215-8782 or  
(346) 248-7799 or (669) 900-9128

Press \*9 to raise your hand to speak during the public hearing

Webinar ID: 928 3971 1353

Password: 815298

*[The Council will convene via ZOOM CONFERENCE at 5:15 p.m. and it is expected they will adjourn into a teleconference Executive Session at 5:16 p.m. to discuss pending litigation.]*

1. Roll Call
2. Draft unapproved minutes of the Regular Meeting of the City Council held April 29, 2020.
3. Presentation and consideration of a Road Paving Plan for 2020.

4. Consideration of request by the Rye Golf Commission to temporarily remove/extend the early enrollment deadline for the pool for 2020.
5. Authorization of the City Manager to approve refunds for all pool-only members who have already paid partially or in full for their 2020 Membership in the event that a governing body declares the pool will not be permitted to open for the entirety of the 2020 pool season.
6. Authorization of the City Manager to enter into an Inter-Municipal Agreement with Westchester County to install new subscriber radios and equipment to the facilities and identified apparatus for first line emergency response which will replace outdated equipment. The new equipment will be provided by the County at no cost.
7. Continue SEQRA discussion regarding a zoning petition from The Miriam Osborn Memorial Home to amend the text of the City of Rye Zoning Code Association to create a new use and development standards for “Senior Living Facilities” in the R-2 Zoning District.
8. Open a public hearing for consideration of a petition from The Miriam Osborn Memorial Home to amend the text of the City of Rye Zoning Code Association to create new use and development standards for “Senior Living Facilities” in the R-2 Zoning District. All public hearing comments should be emailed to [publichearingcomments@ryeny.gov](mailto:publichearingcomments@ryeny.gov) with “Osborn Zoning Change” as the subject.
9. Consideration of setting a public hearing for May 27, 2020 to amend Chapter 133 Noise of the Code of the City of Rye, by amending § 133- 8(G) “Permit required; construction work, mechanical rock removal and blasting restrictions” to prohibit certain activities through June 30, 2020. All public hearing comments should be emailed to [publichearingcomments@ryeny.gov](mailto:publichearingcomments@ryeny.gov) with “Chapter 133” as the subject.
10. Consideration to set a public hearing on May 27, 2020 to adopt a twelve-month moratorium in the City of Rye temporarily prohibiting the review, processing or approval of any application related to the storage and dissemination of compressed natural gas or other type of energy or fuel transfer or energy or fuel generating facility. All public hearing comments should be emailed to [publichearingcomments@ryeny.gov](mailto:publichearingcomments@ryeny.gov) with “Moratorium” as the subject.
11. Authorization for the City of Rye School District to use the City streets on May 31, 2020 from 2:00 PM – 4:00 PM for a graduation vehicle parade to acknowledge and celebrate the Class of 2020.
12. Appointments to Boards and Commissions by the Mayor with Council approval.
13. Old Business/New Business.
14. Adjournment

\*\*\*\*\*

The next regular meeting of the City Council will be held on Wednesday, May 27, 2020 at 5:30 p.m.

\*\* City Council meetings are available live on Cablevision Channel 75, Verizon Channel 39, and on the City Website, indexed by Agenda item, at [www.ryeny.gov](http://www.ryeny.gov) under "RyeTV Live".

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***DRAFT UNAPPROVED MINUTES*** of the  
Regular Meeting of the City Council of the City of  
Rye held on April 29, 2020, at 5:15 P.M.

PRESENT:

JOSH COHN, Mayor  
SARA GODDARD  
CAROLINA JOHNSON  
RICHARD MECCA  
JULIE SOUZA  
BENJAMIN STACKS  
Councilmembers

ABSENT:

PAMELA TARLOW, Councilmember

The Council convened at 5:15 P.M. by videoconference pursuant to Governor Cuomo's Executive Order 202.1 waiving requirements of the Open Meetings Law. Councilman Mecca made a motion, seconded by Councilwoman Souza, to adjourn briefly into executive session to discuss litigation and personnel matters. The Council reconvened in a public videoconference at 5:50 P.M. The meeting was streamed live at [www.ryeny.gov](http://www.ryeny.gov) for public viewing.

1. Roll Call.

City Clerk D'Andrea called the roll via teleconference; there was a quorum present to conduct the meeting.

2. Draft unapproved minutes of the Regular Meeting of the City Council held March 11, 2020.

Councilman Mecca made a motion, seconded by Councilwoman Souza, to adopt the draft minutes of the Regular Meeting of the City Council held April 15, 2020.

3. Coronavirus Update and City response.

Mayor Cohn gave a brief update on the coronavirus pandemic and the City's response. He reported the latest numbers of positive cases throughout Westchester and the City of Rye, many of which have already recovered. He addressed the growing concerns around social distancing and other issues, and said that the City can best respond to specific complaints through [covid@ryeny.gov](mailto:covid@ryeny.gov), but the real enforcement has to be those of voluntary actions. He said that the City had been receiving complaints about business operations, and was dealing with them as reasonably and equitably as possible. With respect to social distancing, Mayor Cohn commented that groups who reside together need not socially distance. A family group on the street has every right to be in a family group, but asked those who do not to be safe and maintain the distancing regulations. He further reported that the SBA is dedicating resources to access for small banks seeking loans for their customers. He encouraged residents to look into the Chamber of Commerce's initiative, "Rye's Up," in which residents can support the small

businesses of Rye on the Chamber's website. Mayor Cohn reported that with respect to the pool opening and summer camp, the City was not hearing comforting words from either the state or the county. The state would rule with respect to pools and the county with respect to camps. For each, the problems are obvious: how to manage the cleanliness or social distancing that would be required. Mayor Cohn said that we are still in a period of uncertainty. He thanked City staff for working well through the situation. Finally, with respect to updates, he invited anyone interested to subscribe to the City's email listserv.

City Manager Usry reported that in just a few short months, with the hard work of the department heads and diligent preparation, the City has been able to remotely operate while still serving residents at a full service level. In the coming weeks, the staff will be preparing for measures to prepare for a re-opening, such as physical changes to the building to protect staff and residents. While the level of staffing at a time is not yet known, Mr. Usry explained that the goal is to be as prepared as the City as going into this time of pause. He stressed that the safety and health of the residents and staff are the most important aspect of the planning process. City Manager Usry also said that staff will prepare to review operations and financials to plan for what is to come.

4. Resolution to transfer \$516,487.50 from the 2020 Capital Reserve Fund for the City of Rye share of the Rye Town Park capital expenditures (subject in part to FEMA reimbursement).  
Roll Call.

Mayor Cohn stated that the City is expected to be reimbursed \$445,387.79 from several grants, due to the fixing of the seawall. (The City of Rye is responsible for 39.278% of Rye Town Park capital contributions. Per invoices received through 2/10/2020, the City's share of capital contributions is \$516,487.50). Mayor Cohn stated that these were all projects that the Council discussed and were inclined to support. In discussion recently with the Rye Town Park Commission with future projects, with no grant applications now pending, it is the opinion of the mayor and several commissioners that Rye Town Park should not apply for grants that have material matching requirements, and that it should not do so until the park has a better handle on its financial position. One of the actions taken was that the Commission shelved review of the park budget for this year, because the park does not know when it will be able to open. The park runs without a surplus and the park is keeping staff in the park and so there are expenses running. Further material expenditures are on hold until there is a better understanding of the park situation.

Councilwoman Souza asked if Mayor Cohn's fellow members of the commission were in agreement with the above. Mayor Cohn responded that at least one was, but not all commissioners were present. It did seem as if at least one of the commissioners had some difficulty understanding that what might have been approved by this council before may not be the case now. Hopeful that that commissioner better understand the situation.

Councilwoman Souza made a motion, seconded by Councilman Mecca, to adopt the following resolution:

**RESOLVED**, that the City Council authorize the transfer of \$516,487.50 from the 2020 Capital Reserve Fund for the City of Rye share of the Rye Town Park capital expenditures (subject in part to FEMA reimbursement).

**ROLL CALL**

AYES: Mayor Cohn, Councilmembers Goddard, Johnson, Mecca, Souza, Stacks  
NAYS: None  
ABSENT: Councilwoman Tarlow

5. Resolution regarding 2020 assessment roll and real property grievance process.

Corporation Counsel Wilson explained that the taxing jurisdiction may modify how they process the assessment roll and the grievance process. Governor Cuomo’s Executive Order alleviates the usual requirements, and allows the municipalities to hold the grievance processes telephonically. It also allows the municipality to publish the tentative roll on its website.

Councilman Mecca made a motion, seconded by Councilman Stacks and unanimously carried to adopt the following resolution:

**RESOLUTION REGARDING 2020 ASSESSMENT ROLL AND REAL PROPERTY GRIEVANCE PROCESS**

**WHEREAS**, the Governor of the State of New York has issued various Executive Orders and limitations on municipal actions so as to protect the public as well as municipal employees during the time of this COVID-19 Pandemic (“Pandemic”), including Executive Order 202.22, issued April 20, 2020, which authorizes local governments to take certain actions pertaining to real property tax assessment practices pursuant to Article 5 of the Real Property Tax Law (RPTL); and

**WHEREAS**, consistent with the foregoing, the City Council desires to protect the rights of City taxpayers to pursue lawful assessment roll review and grievance proceedings while protecting the health and safety of such persons and municipal employees.

**NOW, THEREFORE**, in accordance with Executive Order 202.22, it is resolved by the City Council as follows:

- (1) All “WHEREAS” paragraphs above are incorporated herein by reference as though set forth in full.
- (2) The tentative assessment roll shall be published on the City of Rye’s website and taxpayer review of the tentative assessment roll with the City Assessor shall be by appointment only, said appointments to be conducted only by telephone.
- (3) The Board of Assessment Review shall only hear grievance complaints remotely by telephone conference call or similar video conference service. The public shall be given an opportunity to hear and/or view said hearings.

(4) The City Assessor and Board of Assessment of Review, in consultation with the Corporation Counsel, will establish any necessary procedures to implement this Resolution and the assessment review and grievance process.

(5) This process shall be applicable for 2020 only.

6. Resolution adopting a reduction in late penalties for County tax payments.

Corporation Counsel Wilson explained there are two laws for how the City allows late penalties on taxes to be paid: the City Charter and the RPRL. This resolution would mirror the County's legislation on collecting late payments for County taxes, concerning the reduction of interest and penalties for taxes until July 15.

Councilwoman Souza made a motion, seconded by Councilman Mecca and unanimously carried, to adopt the following resolution:

**RESOLUTION REGARDING REDUCTION OF INTEREST AND PENALTIES  
RELATING TO THE LATE PAYMENT OF COUNTY TAXES FOR 2020 AS A RESULT  
OF COVID-19**

**WHEREAS**, on March 7, 2020, the Governor of the State of New York declared a State of Emergency for the entire State of New York; and

**WHEREAS**, on March 13, 2020, the President of the United States declared a COVID-19 pandemic a national emergency; and

**WHEREAS**, on March 20, 2020, Governor Cuomo executed the "New York State on PAUSE" executive order, a 10-point policy that, among other things, requires nonessential businesses to close, prohibits nonessential gatherings of individuals, and encourages individuals to stay at home; and

**WHEREAS**, in response to the COVID-19 public health emergency, the tax filing dates for federal and New York State income taxes have been extended from April 15, 2020 to July 15, 2020; and

**WHEREAS**, the economic impact of the COVID-19 public health emergency and the measures required to combat it have impaired the ability of individuals to remain current with their financial obligations; and

**WHEREAS**, Real Property Tax Law Section 1182 provides that the governing body of a taxing authority may authorize the official charged with the collection of a tax to waive interest and penalties upon said tax based upon a finding that it is in the best interest of the taxing authority to do so; and

**WHEREAS**, City Charter §§ C22-8 and C22-9 allows for the City Council, by resolution, to modify the penalty rates for late payment of taxes; now therefore be it

**RESOLVED**, that the City Council of the City of Rye finds that it is in the best interest of the City of Rye to reduce the penalties for late payment of County Property and County District taxes as follows: during the month of June up until July 15, 2020 to one percentum (1%); if paid from July 16, 2020 until July 31, 2020 five percentum (5%); if paid during the months of August and September, seven percentum (7%).

This Resolution shall take effect immediately and shall expire on December 31, 2020.

ROLL CALL

AYES: Mayor Cohn, Councilmembers Goddard, Johnson, Mecca, Souza, Stacks  
NAYS: None  
ABSENT: Councilwoman Tarlow

Mayor Cohn stated that the County gives him the authority to waive penalties of late county taxes due to COVID-19 if the hardship criteria set forth by the County is met. The amount of money that would be involved if everyone eligible were to pay late and that is \$30,000 or less. These hardship criteria are being applied across the county. Mayor Cohn said that he was exercising his right to waive the penalties associated with hardship in conjunction with the County requirements.

8. Public Hearing to amend Chapter 177 “Senior Citizen Tax Exemption” to extend the application deadline for 2020.

Corporation Counsel Wilson said that this amendment would give seniors additional time to file an application for a tax exemption, to June 15, 2020. With the pandemic, the application numbers are currently down quite a bit compared to others years. Other communities have extended this courtesy deadline for their senior residents as well. The deadline is usually May 1. This would allow for an additional six weeks.

Councilwoman Johnson made a motion, seconded by Councilwoman Souza, to open the public hearing.

City Clerk D’Andrea read one comment submitted via email by a Mr. Leech, in support of the local law.

There being no further comments, Councilwoman Souza made motion, seconded by Councilwoman Goddard, to close the public hearing.

Councilwoman Johnson made a motion, seconded by Councilwoman Souza, to adopt the following amendment to Chapter 177:

**CITY OF RYE  
LOCAL LAW NO. 5 2020**

**A local law to amend Chapter 177, Article III “Senior Citizen’s Exemption” of the Code of the City of Rye, by amending § 177-27 “Application for exemption” to add a new sentence with respect to the emergency extension for filing of an application for a Senior Citizen Exemption for 2020.**

Be it enacted by the City Council of the City of Rye as follows:

**Section 1.** § 177-27. Application for exemption.

**§ 177-25 Exemption stated.**

Pursuant to § 467 of the Real Property Tax Law, real property owned by one or more persons, each of whom is 65 years of age or over, or real property owned by husband and wife, or by siblings, one of whom is 65 years of age or over, shall be exempt from taxation by the City of Rye to the extent permitted by the schedule of exemptions contained in § 467 of the Real Property Tax Law. In addition, persons meeting the above-described age requirements who own shares in a residential cooperative corporation shall be exempt from taxation by the City of Rye to the extent permitted and pursuant to the terms of Subsection 3(a) of § 467 of the Real Property Tax Law.

**§ 177-26 Conditions of exemption.**

No exemption shall be granted:

- A. If the income of the owner or the combined income of the owners of the property for the income tax year immediately preceding the date of making application for exemption exceeds the maximum sum permitted by the schedule of exemptions contained in § 467 of the Real Property Tax Law. Where title is vested in either the husband or wife, their combined income may not exceed such sum. Such income shall include social security and retirement benefits, interest, dividends, total gain from the sale or exchange or a capital asset which may be offset by a loss from the sale or exchange or a capital asset in the same income tax year, net rental income, salary or earnings and net income from self-employment but shall not include supplemental security income, a return of capital, gifts or inheritances.
- B. Unless the owner shall have held an exemption under this section for his previous residence and unless the title of the property shall have been vested in the owner or one of the owners of the property for at least 12 consecutive months prior to the date of making application for exemption. Where a residence is sold and replaced with another within one year and both residences are within the state, the period of ownership of both properties shall be deemed consecutive for purposes of the exemption.
- C. Unless the property is used exclusively for residential purposes.

D. Unless the real property is the legal residence of and is occupied in whole or in part by the owner or by all of the owners of the property.

**§177-27      Application for exemption.**

Application for such exemption must be made by the owner or all of the owners of the property on forms prescribed by the State Board and furnished by the City Assessor's office, and shall furnish the information and be executed in the manner required or prescribed in such forms, and shall be filed each year in the City Assessor's office on or before the taxable status date, namely, the first day of May. Notwithstanding the preceding sentence, the last date for filing such application in 2020 shall be June 16, 2020.

**§ 177-28      Notice to apply for exemption.**

At least 60 days prior to the taxable status date, the City Assessor shall mail to each person who was granted exemption pursuant to this Article on the latest completed assessment roll an application form and a notice that such application must be filed on or before taxable status date and be approved in order for the exemption to be granted. Failure to mail any such application form and notice or the failure of such person to receive the same shall not prevent the levy, collection and enforcement of the payment of the taxes on property owned by such person.

**§ 177-29      Penalties for offenses.**

Any conviction of having made any willful false statement in the application for such exemption shall be punishable by a fine of not more than \$100 and shall disqualify the applicant or applicants from further exemption for a period of five years.

**Section 2:** If any provision of this Local Law is declared illegal, unconstitutional or unenforceable by a court of competent jurisdiction, the remainder of this Local Law shall be declared to have been separately adopted and shall remain in full force and effect.

**Section 3:** This local law shall take effect immediately upon filing with the Secretary of State.

ROLL CALL

AYES: Mayor Cohn, Councilmembers Goddard, Johnson, Mecca, Souza, Stacks  
NAYS: None  
ABSENT: Councilwoman Tarlow

9. Set a Public Hearing for May 13, 2020 for consideration of a petition from The Miriam Osborn Memorial Home to amend the text of the City of Rye Zoning Code to create new use and development standards for “Senior Living Facilities” in the R-2 Zoning District.

Steven Wrabel, McCullough Goldberger and Staudt on behalf of the applicant, addressed the Council. He stated that he submitted a revised EAF Part I, but otherwise, the materials before

the Council remain the same. He welcomed questions and asked the Council to set the public hearing on the zoning change.

Councilwoman Johnson asked if the project intended will invoke the rock chipping law.

Mr. Wrabel responded that the applicant was not at a stage to have a detailed site plan or construction plan, prior to the zoning being amended.

Andrew Tung, landscape architect for the applicant from Divney Tung Schwalbe, addressed the Council. He said that the applicant did not have that information today.

Councilwoman Johnson asked for clarification on a chemical spill at some point from the Osborn that was listed on the EAF form. She asked what they were planning to store on the property.

Mr. Tung responded that there had been two spills that occurred over ten years ago that they had been cleaned up. The fuels stored on site would be natural gas.

Councilwoman Johnson asked if the employees were counted in the calculation of the burden on sewer system.

Mr. Tung responded that they were included as a calculation of both the residents and the dining facilities.

Councilwoman Souza asked if the application was for 130 units or residents.

Matt Anderson, Director of the Osborn, responded that it was a proposed additional 130 residents.

There was a discussion about the EMS needs for the facility, being that the Osborn is responsible for approximately 30% of Rye's calls.

Mayor Cohn said that he had some questions on the Part II of the EAF. He asked about specifics about the boxes that were checked regarding impact, and the process for answering those environmental questions.

City Planner Miller responded that staff would be able to clarify those responses for the Council. He added that with respect to the archeological significance pointed to the fact that the entire area (Rye and beyond) has been deemed that it "may" have archeological significance and that is reflected on the form.

Mayor Cohn read a statement received via email from Jim Slattery, opposing the zoning change, specifically concerned with the loss of the bucolic nature of the property and the loss of residential home values as a result.

Mr. Wrabel responded that when the applicant went through this with the Planning Commission, the thought was that the bucolic feel of the Osborn should be maintained. He said that they are proposing a limited allowance of that reduced setback, increasing the setback for taller structures.

Councilman Mecca commented that the Planning Commission was very sensitive to the zoning changes with regard to the surrounding residential properties. The intent was to keep it as quiet as possible. That particular corner of the property in question would stay bucolic.

Mayor Cohn read another statement from Mr. Slattery, opposing the zoning change with regard to the building allowances radically changing the streetscape and lowering the property values of the nearby residences.

Mr. Wrabel clarified that this may be a misunderstanding about the nature of the zoning change. Referencing the text that was provided, the setbacks from Osborn Road are increased from what is permitted now. There is a limited allowance from the proposed setback. The all Road was specifically targeted because of its more commercial nature. Mr. Wrabel said that the application feels that it found the right balance. He said they have maintained or increased the setback of what is currently in place and have increased setbacks for taller buildings as well. This was done to specifically ensure preservation.

Mayor Cohn read a statement from Jim Culyer, asking about the tax difference that the development would make.

Mr. Wrabel responded that he would understand that greater flexibility would allow the improvements to be built and it would seem that it would likely raise the assessed value of the site. He said that certainly the nuances of that analysis would be undertaken by a tax assessment professional.

Councilwoman Souza said that it would be important to understand what the impact would be, due to the potential impact on the overall infrastructure.

Mayor Cohn suggested leaving the SEQRA discussion open and setting a public hearing.

Councilwoman Souza made a motion, seconded by Councilman Mecca and unanimously carried, to set a public hearing for May 13, 2020 for consideration of a petition from The Miriam Osborn Memorial Home to amend the text of the City of Rye Zoning Code to create new use and development standards for “Senior Living Facilities” in the R-2 Zoning District. All public hearing comments should be emailed to [publichearingcomments@ryeny.gov](mailto:publichearingcomments@ryeny.gov) with “Osborn Zoning Change” as the subject.

Councilwoman Johnson asked if the hearing would be available to the public via zoom.

Corporation Counsel Wilson responded that it would, and that it would be indicated in the notice. She reminded that the applicant would also be mailing notices to nearby property owners.

10. Consideration of a request by the Rye Chamber of Commerce to expand the usable footprint of the southern end of the City's Car Park #2 on Sundays from May 24, 2020 through December 6, 2020 from 6:30 a.m. to 3:30 p.m. for the Rye Farmer's Market to accommodate social distancing restriction during the health emergency. The new layout would spread out the proximity of each vendor and limit the number of shoppers allowed to shop simultaneously. Market hours are from 8:30 a.m. to 2 p.m.

Councilwoman Souza made a motion, seconded by Councilman Mecca and unanimously carried, to approve the request by the Rye Chamber of Commerce to expand the usable footprint of the southern end of the City's Car Park #2 on Sundays from May 24, 2020 through December 6, 2020 from 6:30 a.m. to 3:30 p.m. for the Rye Farmer's Market to accommodate social distancing restriction during the health emergency.

11. Old Business/New Business.

There was nothing discussed under this agenda item.

12. Adjournment.

There being no further business to discuss, Councilman Mecca made a motion, seconded by Councilwoman Johnson and unanimously carried, to adjourn the meeting at 6:55 P.M.

Respectfully submitted,

Carolyn D'Andrea  
City Clerk



# CITY COUNCIL AGENDA

DEPT.: City Manager

DATE: May 13, 2020

CONTACT: Greg Usry, Interim City Manager

**AGENDA ITEM:** Presentation and consideration of a Road Paving Plan for 2020.

**FOR THE MEETING OF:**  
May 13, 2020

**RECOMMENDATION:** That the Council hear the plan.

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:**

See Attached.



To: Ryan Coyne, City Engineer

Date: May 13, 2020  
Project #: 46292.03

## Memorandum

From: Gordon Daring

Re: 2020 City of Rye Resurfacing Program

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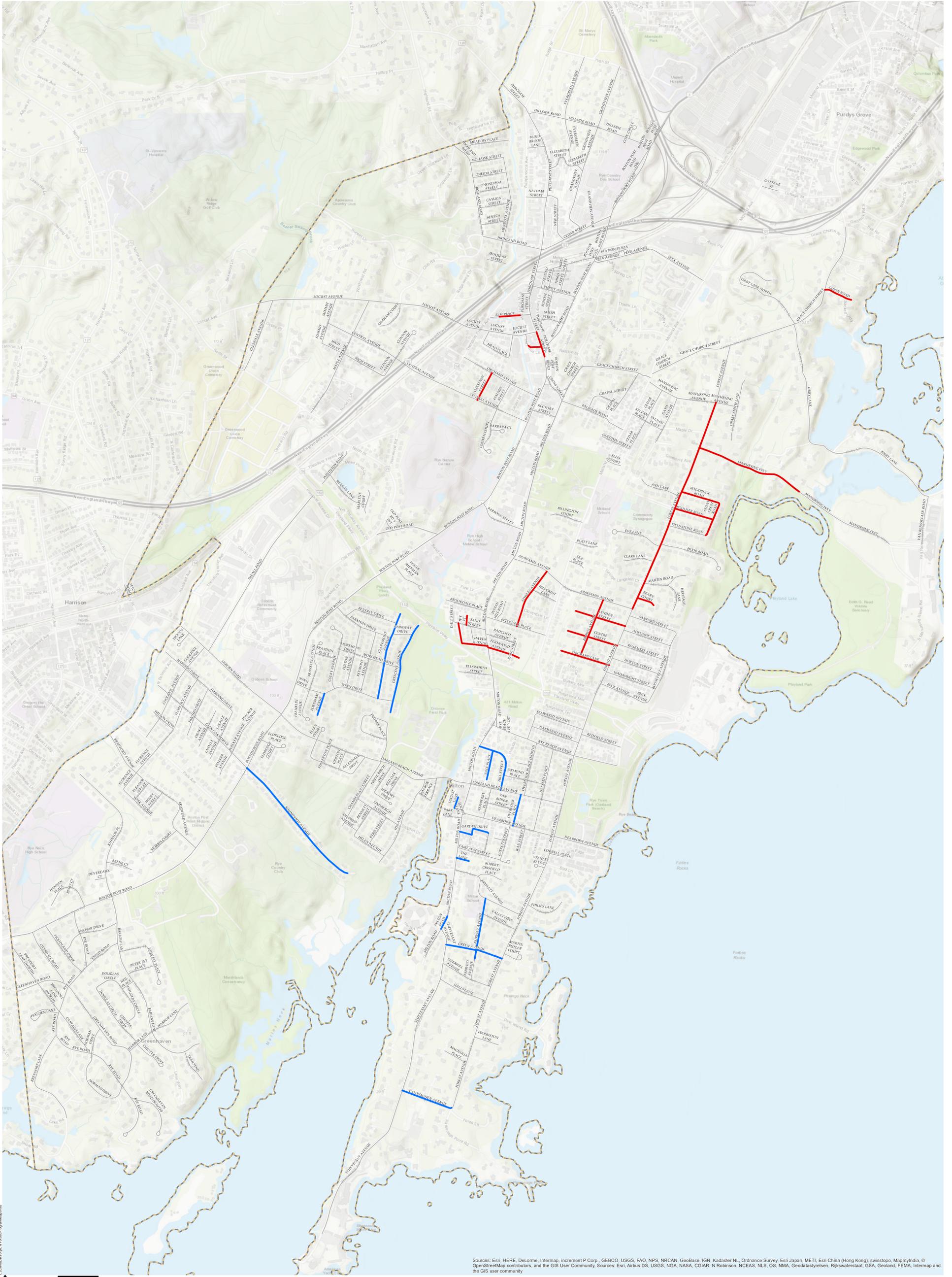
The attached list and map showing the 2020 City of Rye Resurfacing Program has been developed based on the updated pavement condition evaluation that was conducted late last year. Streets were selected to be included in the program up to the available budget based on roads that were found to be in the poorest condition in the recent pavement condition evaluation.

The roads that were selected for the program were divided into two groups – one to be paved this Spring, the other to be paved later in the year, if funding allows. The roads selected to be paved in the Spring include Forest Avenue and streets in the downtown area. It makes sense to improve these important streets while the current traffic levels are reduced. Note that a 1.5-inch overlay is proposed for Forest Avenue between Apawamis Avenue and Manursing Avenue to provide a good riding surface while permitting and plans are developed for the complete streets project planned on this section of road.

**2020 City of Rye Resurfacing Program**

5/13/2020

<u>Street Segment</u>	<u>From</u>	<u>To</u>	<u>PCI Treatment</u>	<u>Cost</u>	<u>Comment</u>
<b><u>Paving to be performed in Spring</u></b>					
BEARY COURT	FOREST AV	CUL DE SAC	55 Mill & Overlay	28,807	
BOULDER ROAD	FOREST AV	STONYCREST RD	56 Mill & Overlay	42,018	
BROWN AVENUE	ORCHARD LA	APAWAMIS AV	52 Mill & Overlay	67,802	
CENTRE STREET	FOREST AV	DEAD END	55 Mill & Overlay	54,584	
CHESTNUT STREET	CENTRAL AV	ORCHARD AV	54 Mill & Overlay	45,652	
COWLES AVENUE	INTERVALE PL	APAWAMIS AV	53 Mill & Overlay	60,436	
ELM PLACE	WEST PURDY AV EXT	323' E OF THEODORE FREMD AV	50 Mill & Overlay	19,720	
FERNWOOD AVENUE	MILTON RD	DEAD END	54 Mill & Overlay	39,872	
FOREST AVENUE	APAWAMIS AV	MANURSING AV	46 Thin Overlay	120,356	
GUION ROAD	GRACE CHURCH S	DEAD END	49 Mill & Overlay	31,871	
HAVEN AVENUE	MILTON RD	WINTHROP ST	48 Mill & Overlay	26,081	
HAVILAND LA	198' S OF LOCUST AV	BOSTON POST RD	49 Mill & Overlay	10,149	
IVY ST	SAND ST	DEAD END	54 Mill & Overlay	10,053	
LYNDEN STREET	FOREST AV	DEAD END	56 Mill & Overlay	54,778	
MANURSING WAY	FOREST AV	1817' S OF FOREST AVE	52 Mill & Overlay	117,096	
ORCHARD LANE	FOREST AV	DEAD END	54 Mill & Overlay	53,167	
PURCHASE STREET	BOSTON POST ROAD	LOCUST AV	55 Mill & Overlay	51,745	
ROCKRIDGE ROAD	STONYCREST RD	FOREST AV	53 Mill & Overlay	47,876	
STONY CREST ROAD	FIELDSTONE RD	ROCKRIDGE RD	50 Mill & Overlay	40,761	
WINTHROP STREET	HAVEN AV	SAND ST	56 Mill & Overlay	20,509	
				<b>\$ 943,333</b>	
<b><u>Paving to be performed in Fall (if funding allows)</u></b>					
CLAREMONT AVENUE	SONN DR	DEAD END	52 Mill & Overlay	93,380	
CRESCENT AVENUE	PARKWAY DR	DEAD END	52 Mill & Overlay	98,278	
FAIRWAY AVENUE	350' N OF OVERHILL AV	HEWLETT AV	54 Mill & Overlay	68,260	
FORDHAM AVENUE	SONN DR	DEAD END	54 Mill & Overlay	21,634	
GARDEN DRIVE	MILTON RD	ORCHARD DR	50 Mill & Overlay	39,981	
GREEN AVENUE	FOREST AV	STUYVESANT AV	56 Mill & Overlay	61,222	
HILL STREET	OAKLAND BEACH	MILTON RD	45 Mill & Overlay	94,379	omit section paved by Con Ed
LOCUST LANE	140' W OF MILTON RD	DEAD END	50 Mill & Overlay	12,244	
MILTON ROAD	STUYVESANT AVE	235' N OF STUYVESANT AVE	52 Mill & Overlay	20,445	
OVERLOOK PLACE	DEARBORN AV	OAKLAND BEACH AVE	52 Mill & Overlay	34,156	
SOUNDVIEW AVENUE	BOSTON POST ROAD	DEAD END	52 Mill & Overlay	178,830	
THE LANE	MILTON RD	DEAD END	50 Mill & Overlay	35,863	
VALE PLACE	HILL ST	DEAD END	54 Mill & Overlay	29,693	
VAN WAGNEN AVENUE	STUYVESANT AV	FOREST AV	53 Mill & Overlay	58,261	
				<b>\$ 846,627</b>	



Sources: Esri, HERE, DeLorme, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, MapmyIndia, © OpenStreetMap contributors, and the GIS User Community. Sources: Esri, Airbus DS, USGS, NGA, NASA, CGIAR, N Robinson, NCEAS, NLS, OS, NMA, Geodatasysteisen, Rijkswaterstaat, GSA, Geoland, FEMA, Intermap and the GIS user community

**2020 Resurfacing Program | Rye, New York**

**Road Program 2020**

- Spring 2020
- Fall 2020
- All Roads



# CITY COUNCIL AGENDA

DEPT.: City Manager

DATE: May 13, 2020

CONTACT: Greg Usry, Interim City Manager

**AGENDA ITEM:** Consideration of request by the Rye Golf Commission to temporarily remove/extend the early enrollment deadline for the pool for 2020.

**FOR THE MEETING OF:**  
May 13, 2020

**RECOMMENDATION:** That the Council authorize the City Manager to extend the deadline.

**IMPACT:** Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:** Due to the new COVID-19 restrictions, the City may have to postpone the opening of the Rye Golf Club pool.



# CITY COUNCIL AGENDA

DEPT.: City Manager

DATE: May 13, 2020

CONTACT: Greg Usry, Interim City Manager

**AGENDA ITEM:** Authorization of the City Manager to approve refunds for all pool-only members who have already paid partially or in full for their 2020 Membership in the event that a governing body declares the pool will not be permitted to open for the entirety of the 2020 pool season.

**FOR THE MEETING OF:**  
May 13, 2020

**RECOMMENDATION:** That the Council authorize the City Manager to approve the refunds if the criteria is met.

**IMPACT:** Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:** Due to the new COVID-19 restrictions, the City may have to postpone the opening of the Rye Golf Club pool.



# CITY COUNCIL AGENDA

DEPT.: City Manager

DATE: May 13, 2020

CONTACT: Greg Usry, Interim City Manager

**AGENDA ITEM:** Authorization of the City Manager to enter into an Inter-Municipal Agreement with Westchester County to install new subscriber radios and equipment to the facilities and identified apparatus for first line emergency response which will replace outdated equipment.

**FOR THE MEETING OF:**  
May 13, 2020

**RECOMMENDATION:** That the Council authorize the City Manager to sign the IMA.

**IMPACT:** Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:** The new equipment will be provided by the County at no cost.

See Attached Agreement.

George Latimer  
County Executive

Department of Emergency Services

John M. Cullen  
Commissioner

February 27, 2020

Mayor Josh Cohn  
City of Rye  
3rd Floor City Hall, 1051 Boston Post Road  
Rye, NY 10580

Dear Mayor Cohn:

Westchester County has commenced the construction of a multimillion dollar radio replacement project in an effort to enhance the emergency services communications systems used by the fire, EMS, Public Safety Answering Points (PSAPs) and Hospitals in the county. This system is used daily for primary emergency radio communications to coordinate emergency responses and to support the coordination of the heavily used fire and EMS mutual aid system. New system enhancements include improved system coverage, including on-street portable radio coverage, upgraded system reliability, redundancy and interoperability.

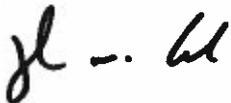
One component of the system upgrade will be the replacement of the current outdated trunked radio equipment the County provided in the past for first line emergency response apparatus. In an effort to move forward with this project, the County must enter into an Inter-Municipal Agreement (IMA) with municipalities to provide and install the new subscriber radios and equipment to the facilities and identified apparatus. The new radio equipment, including installation, is being provided by the County at no cost to the agency or municipality.

Included with this letter is a copy of the IMA that must be completed and returned to the County for execution. Upon execution of the agreement, we will work with the appropriate fire, EMS and Law Enforcement agency(s) in your jurisdiction to arrange for the installation of this life safety equipment. A list of the equipment being provided to the agency(s) is included in Appendix "A". Although we may not be able to provide radio equipment to every piece of apparatus, we plan on providing subscriber equipment to first line apparatus as we have in the past.

The County will be communicating with the local emergency services providers so they are aware of the required agreements. If you have any questions or concerns, please reach out to the Communications Division Chief, Michael Volk. He can be reached at (914) 231-1684 or by email at [mkv1@westchestergov.com](mailto:mkv1@westchestergov.com)

Thank you in advance for your efforts in assisting with moving this important and exciting project to fruition.

Sincerely,



John M. Cullen  
Commissioner

The Westchester County Department of Emergency Services  
4 Dana Road  
Valhalla, New York 10595 Telephone: (914) 231-1850 Fax: (914) 231-1622

**THIS LICENSE AGREEMENT** (the "License Agreement"), made the \_\_\_\_\_  
day of \_\_\_\_\_, 2020 ("Effective Date) by and between:

**THE COUNTY OF WESTCHESTER**, by and through its Department of  
Emergency Services or Department of Public Safety, a municipal corporation of the  
State of New York, having an office and place of business in the Michaelian Office  
Building, 148 Martine Avenue, White Plains, New York 10601

(hereinafter referred to as the "County",)

and

City of Rye, a municipal corporation of the State of  
New York, having an office and place of business at \_\_\_\_\_

(hereinafter referred to as the "Municipality").

(The "County" and "Municipality" are referred to collectively as the "Parties".)

**W I T N E S S E T H:**

**WHEREAS**, the County wishes to supply emergency communications equipment,  
including control stations, mobiles and portable radio communications hardware, installations  
and supplies to public safety-first responders from fire, emergency medical services and law  
enforcement agencies within Westchester County to support emergency communications and  
maintain a safe and reliable means to communicate while serving the residents, workforce and  
visitors in Westchester County (the "Program"); and

**WHEREAS**, the County will purchase the emergency communications equipment  
using various funding sources and distribute such equipment to local municipalities, Fire  
Districts and hospitals for use on primary first line emergency response equipment (fire and  
emergency medical services), authorized law enforcement dispatch locations and hospital  
facilities; and

**WHEREAS**, the Municipality will use the emergency communications equipment to communicate on County radio communications systems (the "County Systems") to provide public safety first response to fire and medical emergencies and for law enforcement agency matters on a 24/7 basis to the public; and

**WHEREAS**, the County desires to enter into this license agreement with the Municipality for the distribution and operation of the aforesaid equipment.

**NOW, THEREFORE**, in consideration of the terms and conditions herein contained, the Parties agree as follows:

**ARTICLE I**  
**GENERAL PROVISIONS**

**1. GENERAL TERMS:**

The County, acting through the Westchester County Commissioner of Emergency Services or his designee for fire and EMS equipment and the Westchester County Commissioner of Public Safety or his designee for law enforcement equipment, (the "Commissioner"), shall furnish the Municipality with emergency communications equipment, including control stations, mobiles and portable radio communications hardware, supplies, power supplies, cabling, antennas, microphones and accessories as described in Schedule "A" (the "Equipment"), as well as the installation of the Equipment in fixed and/or mobile equipment according to the terms set forth in this License Agreement.

Schedule "A" is also referred herein to as the "Equipment List."

The County or its vendor shall distribute and install the Equipment for the Municipality. The County or its vendor shall schedule with the Municipality the installation of the Equipment. The Parties agree that upon delivery and installation of the Equipment the Municipality or its Third Party Authorized User shall sign for and acknowledge receipt of the Equipment by executing a written receipt for same, which shall be on a form prepared by the

County and include the recipient, quantity, make, model and serial number of each item of Equipment. The Parties further agree that Schedule "A" shall be updated to reflect the information in the receipt, and that the updated Schedule "A" shall be deemed a part of this License Agreement.

The Equipment delivery hereunder shall be provided in accordance with the County's customary standards and practices.

The Municipality agrees to provide the County with reasonable access to all necessary equipment and information for the County's installation of the Equipment and technical support services.

The Municipality acknowledges and understands that the Equipment to be distributed pursuant to this License Agreement is intended to enhance the ability of first responders to safely and reliably communicate with the County and other emergency response resources, including fire services, Public Safety Answering Points (PSAPs), emergency medical services, public health services, law enforcement agencies and hospitals through the County Systems.

The Municipality acknowledges that the distribution of Equipment is subject to the availability of funding. It shall be within the County's sole and complete discretion as to how much and what type of equipment to distribute to the Municipality. In addition, while it is not currently anticipated that replacement equipment or additional equipment and supplies will be distributed under the Program, the County reserves the right to expand the Equipment in the event that additional funding resources become available. In the event such additional funding resources become available and the County chooses to purchase additional equipment for distribution to the Municipality, the County will send an amended Schedule "A" (the "Amended Equipment List") to the Municipality, which shall identify the additional equipment to be distributed to the Municipality. While the Municipality is under no obligation to accept such additional equipment, the Municipality, within ten (10) days of its receipt of an Amended Equipment List, shall notify the Commissioner in writing whether or not it desires to accept the additional equipment. If the Municipality accepts such additional equipment, delivery,

installation and use of such additional equipment shall be in accordance with the terms of this License Agreement, and Schedule "A" shall be deemed amended to include the Amendment Equipment List.

Once installed by the County, the Municipality shall not uninstall, change or reassign the location or unit assignment of the Equipment without obtaining the prior written consent of the County.

The County will provide initial radio programming and installation services for the Equipment at no charge. Should the Municipality or its Authorized Third Party User wish to purchase additional equipment or system accessories, it shall be responsible for purchasing, repairing, programming and maintaining such equipment. Any new or additional radio programming shall be done by a County authorized communications vendor at the expense of the Municipality and only upon receiving written approval for any new or replacement equipment from the County. The County shall maintain control over the County System, and will establish mandatory user guidelines and operating procedures for all County System users. The Municipality and/or Authorized Third Party User agree to abide by the County's user guidelines and operating procedures for all County System users.

2. **AUTHORIZED USE OF EQUIPMENT:** The Municipality agrees that the Equipment shall be used for emergency response situations, such as responding to a fire, medical or other emergency, or law enforcement matters, or to fulfill mutual aid requests in accordance with applicable law. The Equipment shall be used in accordance with the written guidelines for use developed by the County, a copy of which will be supplied to the Municipality upon request.

3. **MUNICIPALITY'S RESPONSIBILITIES AND EQUIPMENT TRANSFER CONDITIONS:**

(a) The Municipality agrees and shall ensure that only qualified persons with appropriate training will utilize the Equipment when the Equipment is used by the Municipality. The Municipality shall verify that such persons have fulfilled their initial and on-going training

requirements in accordance with all federal, State, and/or County programmatic requirements, as well as all applicable laws, rules and regulations, including but not limited to, those promulgated by the Federal Communications Commission (FCC).

(b) The Municipality shall maintain custody and control of the Equipment and shall not transfer custody and control of the Equipment, except in the case of a transfer to an Authorized Third Party User as provided for herein.

(c) The Municipality shall, at its sole cost and expense, maintain the Equipment in good working order and repair or replace the Equipment if damaged following the Equipment warranty period, if any.

(d) The County shall have the right to designate Equipment for the Municipality's ambulance/EMS service provider or volunteer fire corp. pursuant to the terms of this License Agreement ("Authorized Third Party User"). In such a case, the Municipality shall enter into a written ambulance/EMS service contract or volunteer fire corp. service contract with the Authorized Third Party User for the transfer custody and control (not ownership) of such designated Equipment from the Municipality to the Authorized Third Party User, and the contract shall specifically incorporate by reference this License Agreement and shall make all of the terms, conditions, limitation and requirements of this License Agreement binding upon the Authorized Third Party User as a direct obligation of such Authorized Third Party User to the Municipality and the County. If for any reason the Authorized Third Party User fails, refuses or stops providing emergency first responder services for the Municipality, the Municipality shall repossess the Equipment and either return it to the County or redistribute it with the County's written permission pursuant to the terms of this License Agreement.

(e) The Municipality understands and acknowledges that the County has the right to reissue, remotely disable or retake possession and use of the Equipment. In the event the County notifies the Municipality of such a reissuance, the Municipality will promptly return possession of the Equipment to the County as directed by the Commissioner. The Municipality agrees to

relinquish any claim in law or equity it may have concerning the Equipment in the event of Equipment redeployment or reissuance.

4. **TERM**: The term of this License Agreement shall commence on the Effective Date and continue in full force and effect to the end of the useful life of the Equipment and through the proper disposal of the Equipment, unless the License Agreement shall have been terminated earlier in accordance with paragraph 6.

Nothing in this paragraph shall limit the Municipalities responsibilities under paragraph 3(c), and the phrase "end of the useful life" used above shall not include damage to the Equipment for which the Municipality has the responsibility to repair the Equipment pursuant to paragraph 3(c).

5. **AUDIT**: The Municipality agrees to utilize the Equipment only for the purposes and activities set forth in this License Agreement and shall keep an accurate accounting of all Equipment received pursuant to this License Agreement and the purpose for which the Equipment has been used by the Municipality. The Municipality will allow the County to conduct periodic visits for the purposes of inspection, inventory of the Equipment and auditing the records required hereunder. The Municipality shall establish and maintain complete and accurate written records, documents, reports, and accounts for the Equipment. The Municipality shall provide the County with an annual report (by January 31<sup>st</sup> of each year) in the form attached hereto as Schedule "B" or such other format and interval that may be required by the County. These records must be kept for the balance of the calendar year in which they were made.

6. **TERMINATION**: (a) The County on thirty (30) days notice to the Municipality may terminate this License Agreement in whole or in part when it deems it to be in its best interest.

(b) In the event the Municipality defaults in the performance of any term, condition or covenant herein contained, the County at its option and in addition to any other remedy it may

have to seek damages, judicial enforcement or other lawful remedy, may terminate this License Agreement upon forty eight (48) hours written notice to the Municipality.

(c) Upon termination, all right of the Municipality to the use of the Equipment shall absolutely cease and terminate as though this License Agreement had never been made, but the Municipality shall remain liable to the extent hereinafter provided; and thereupon the County may, by its agents, enter upon the premises where any of the Equipment may be and take possession of all or any such Equipment and thenceforth hold, possess and enjoy the same free from any right of the Municipality or its successors or assigns, to use the Equipment for any purposes whatsoever; but the County shall, nevertheless, have the right to recover from the Municipality any damages and expenses in addition thereto, including reasonable attorneys' fees, which the County shall have sustained by reason of the breach of any covenant of this License Agreement. The County shall take immediate possession of the Equipment issued hereunder wherever found, with or without process of law, and the County shall not be responsible for any damage which Municipality sustains by virtue of said act.

7. **ASSIGNMENT**: The Municipality shall not assign, sublet or transfer or otherwise dispose of its interest in this License Agreement or the Equipment without the prior written consent of the County. Any purported delegation of duties, assignment of rights or subletting of this License Agreement without the prior written consent of the County is void.

8. **COMPLIANCE WITH LAW**: The Municipality shall comply, at its own expense, with the provisions of all applicable local, state and federal laws, rules and regulations and Executive Orders.

9. **ACTS OF GOD**: Neither the County nor the Municipality shall be liable to the other or deemed to be in default for any delay or failure to perform under this License Agreement resulting from acts of God, civil or military insurrection, explosions, floods, riots, earthquakes, strikes, labor disputes, shortages of suitable parts, materials, labor or transportation, or any other causes, but in every case the delays must be beyond the control and without the fault of the County, the Municipality or their respective contractors.

**10. INDEMNIFICATION:** The Municipality agrees:

(a) that except for the amount, if any, of damage contributed to, caused by, or resulting from the sole negligence of the County, the Municipality shall indemnify and hold harmless the County, its officers, employees, agents, and elected officials from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorney's fees or loss arising directly or indirectly out of the performance or failure to perform hereunder by the Municipality, its police officers and firemen, or third parties under the direction or control of the Municipality; and

(b) to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of this Agreement and to bear all other costs and expenses related thereto; and

(c) In the event the Municipality does not provide the above defense and indemnification to the County, and such refusal or denial to provide the above defense and indemnification is found to be in breach of this provision, then the Municipality shall reimburse the County's reasonable attorney's fees incurred in connection with the defense of any action, and in connection with enforcing this provision of the Agreement.

**11. WBE/MBE:** Pursuant to Section 308.01 of the Laws of Westchester County, it is the goal of the County to use its best efforts to encourage, promote and increase the participation of business enterprises owned and controlled by persons of color or women in contracts and projects funded by all departments of the County. Attached hereto and forming a part hereof as Schedule "C" is a Questionnaire entitled Business Enterprises Owned and Controlled by Persons of Color or Women. The Municipality agrees to complete the questionnaire attached hereto as Schedule "C", as part of this Agreement.

**12. ANTI-DISCRIMINATION:** The Municipality expressly agrees that neither it nor any contractor, subcontractor, employee, or any other person acting on its behalf shall discriminate against or intimidate any employee or other individual on the basis of race, creed,

religion, color, gender, age, national origin, ethnicity, alienage or citizenship status, disability, marital status, sexual orientation, familial status, genetic predisposition or carrier status during the term of or in connection with this Agreement, as those terms may be defined in Chapter 700 of the Laws of Westchester County. The Municipality acknowledges and understands that the County maintains a zero tolerance policy prohibiting all forms of harassment or discrimination against its employees by co-workers, supervisors, vendors, contractors, or others.

13. **WAIVER:** Failure of the County to insist, in any one or more instances, upon strict performance of any term or condition herein contained shall not be deemed a waiver or relinquishment of such term or condition, but the same shall remain in full force and effect.

14. **VETERANS:** The County believes it is a laudable goal to provide business opportunities to veterans who were disabled while serving our country, and wants to encourage the participation in County contracts of certified business enterprises owned and controlled by service-disabled veterans. As part of the County's program to encourage the participation of such business enterprises in County contracts, and in furtherance of Article 17-B of the New York State Executive Law, the Municipality agrees to complete the questionnaire entitled Questionnaire Regarding Business Enterprises Owned and Controlled by Service-Disabled Veterans attached hereto as Schedule "D", as part of this License Agreement.

15. **SEVERABILITY:** If any term or provision of this License Agreement is held by a court of competent jurisdiction to be invalid or void or unenforceable, the remainder of the terms and provisions of this License Agreement shall in no way be affected, impaired, or invalidated, and to the extent permitted by applicable law, any such term, or provision shall be restricted in applicability or reformed to the minimum extent required for such to be enforceable. This provision shall be interpreted and enforced to give effect to the original written intent of the Parties prior to the determination of such invalidity or unenforceability.

16. **HEADINGS:** The headings in this License Agreement shall be for references purposes only.

**17. NOTICES:** All notices of any nature referred to in this License Agreement shall be in writing and either sent by registered or certified mail postage pre-paid, or sent by hand or overnight courier, or sent by facsimile (with acknowledgment received and a copy of the notice sent by overnight courier), to the respective addresses set forth below or to such other addresses as the respective parties hereto may designate in writing. Notice shall be effective on the date of receipt.

To the County:

Commissioner  
Department of Emergency Services  
4 Dana Road  
Valhalla, New York 10595

With a copy to:

County Attorney  
Michaelian Office Building, Room 600  
148 Martine Avenue  
White Plains, New York 10601

To the Municipality:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**18. ENTIRE AGREEMENT:** This License Agreement and its attachments constitute the entire Agreement between the Parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings. It shall not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

**19. ENFORCEMENT:** This License Agreement shall be construed and enforced in accordance with the laws of the State of New York. This Agreement shall not be enforceable until signed by both parties and approved by the Office of the County Attorney.

**20. COUNTERPARTS:** This Agreement may be executed simultaneously in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**21. INDEPENDENT CONTRACTOR:** The Municipality is an independent contractor and shall not make any claim, demand or application to or for any right based upon any different status.

**ARTICLE II**  
**EQUIPMENT PURCHASED WITH BIT 32 COUNTY BOND FUNDS**

**22. BIT32 EQUIPMENT:** (a) This Article II shall apply to Equipment paid for by the County with County bond funds authorized pursuant to County Bond Act Nos. 2018-108, 2018-109, 2018-110, 2018-111, 2018-112, 2018-113, 2018-114, 2019-115, 2019-146, 2019-147 and 2019-148. Such Equipment for purposes of this Article II shall be referred to as the “BIT32 Equipment”. In addition to the provisions in Article I, the Parties agree that the provisions in this Article II shall apply to the BIT32 Equipment.

(b) The Parties acknowledge that the County entered into an agreement, dated December 27, 2018, with Motorola Solutions, Inc. (“Agreement IT- 1559”) through which the County purchased the BIT32 Equipment. For purposes of this Article II, the terms and conditions of Agreement IT-1559 and any amendment or extensions with respect to the BIT32 Equipment are hereby made a part hereof and incorporated herein by reference. The Municipality agrees to comply with all terms, conditions and provisions in Agreement IT-1559 applicable to the BIT32 Equipment.

**23. AUTHORIZED USER:** The Municipality acknowledges and understands that through this License Agreement it and any Authorized Third Party User is an Authorized User (as the term Authorized User is defined in Agreement IT-1559) of the BIT32 Equipment. The Municipality agrees to use the BIT32 Equipment in a manner that does not violate the terms of Agreement IT-1559.

**24. OWNERSHIP OF EQUIPMENT:** Title and risk of loss of the BIT32

Equipment shall pass to the Municipality upon delivery. The Municipality agrees that it will not sell or otherwise transfer custody and control of the BIT32 Equipment, except to an Authorized Third Party User as provided for in Article I above.

**25. USE OF SOFTWARE:** (a) The Municipality may use the Software (as defined in Agreement IT-1559) for BIT32 Equipment only for the Municipality's internal business purposes and only in accordance with the Documentation (as defined in Agreement IT-1559). Any other use of the Software is strictly prohibited. Without limiting the general nature of these restrictions, Municipality will not make the Software available for use by third parties on a "time sharing," "application service provider," or "service bureau" basis or for any other similar commercial rental or sharing arrangement.

(b) Municipality will take reasonable efforts to ensure it and any third party under the Municipality's direction or control will not (i) reverse engineer, disassemble, peel components, decompile, reprogram or otherwise reduce the Software or any portion to a human perceptible form or otherwise attempt to recreate the source code; (ii) modify, adapt, create derivative works of, or merge the Software; (iii) copy, reproduce, distribute, lend, or lease the Software or Documentation to any third party, grant any sublicense or other rights in the Software or Documentation to any third party, or take any action that would cause the Software or Documentation to be placed in the public domain; (iv) intentionally remove, or in any way alter or obscure, any copyright notice or other notice of Motorola Solution Inc.'s proprietary rights; (v) provide, copy, transmit, disclose, divulge or make the Software or Documentation available to, or permit the use of the Software by any third party or on any machine except as expressly authorized by Agreement IT-1559; or (vi) use, or permit the use of, the Software in a manner that would result in the production of a copy of the Software solely by activating a machine containing the Software.

(c) Unless authorized by the County in writing, the Municipality will take reasonable effort to ensure it, and any third party under its direction or control will not (i) install licensed

copies of the Software installed in one unit of a Designated Product (as defined in Agreement IT-1559) into a device for which the Software was not authorized for use.

**ARTICLE III**  
**EQUIPMENT PURCHASED WITH STATE GRANT CONTRACT FUNDS**

26. **STATE GRANT EQUIPMENT:** (a) This Article III shall apply to Equipment paid for by the County with funds provided by the County pursuant to a grant contract with the New York State Division of Homeland Security (“State Agency”) and the County Department of Emergency Services, dated November 8, 2018, and any renewals, amendments or extensions thereof (the “State Grant Contract”). Such Equipment for purposes of this this Article II shall be referred to as the “State Grant Equipment”. In addition to the provisions in Article I, the Parties agree that the provisions in this Article III shall apply with regard to the State Grant Equipment.

(b) The terms and conditions of the State Grant Contract and any amendment or extensions are hereby made a part hereof and incorporated herein by reference. The Municipality agrees to comply with all terms, conditions and provisions in the State Grant Contract. The Municipality shall be held accountable for all terms and conditions set for in the State Grant Contract in its entirety. The Municipality shall not use the State Grant Equipment for any activity other than those provided for under the State Grant Contract, except with the State Agency’s prior written permission.

27. **OWNERSHIP OF STATE GRANT EQUIPMENT:** The Municipality agrees that title to the State Grant Equipment shall be governed by the terms of the State Grant Contract. The Municipality will not sell or otherwise transfer the State Grant Equipment, except the Municipality will transfer custody and control of the State Grant Equipment to Authorized Third Party Users as provided for in Article I. The Municipality agrees that the State Agency retains ultimate control over and ownership of the State Grant Equipment pursuant to the terms of the State Grant Contract. The Municipality may dispose of the State Grant Equipment only pursuant to the terms in the State Grant Contract.

**28. CERTIFICATION REGARDING LOBBYING:** The Municipality hereby agrees to complete the Certification Regarding Lobbying attached hereto as Schedule "E" and which is made a part hereof.

**29. CERTIFICATION REGARDING DEBARMENT AND SUSPENSION:** The Municipality hereby agrees to complete the Debarment and Suspension Certificate attached hereto as Schedule "F" and which is made a part hereof.

**30. CERTIFIED ASSURANCES FOR FEDERALLY SUPPORTED PROJECTS:** The Municipality agrees to the terms and provisions set forth in Schedule "G", Division of Homeland Security and Emergency Services Grant Assurances and Certifications for Federally Funded Grants.

**31. REPORTING:** The Municipality shall submit to the County all documentation, information or forms that the County needs in order to comply with the reporting requirements under the State Grant Contract. The Municipality shall complete all form required by the State Agency under the State Grant Contract.

**32. NON-DISCRIMINATION REQUIREMENT:** The Municipality will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest. The Municipality shall not by reason of race, creed, color disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this License Agreement.

**33. EQUAL EMPLOYMENT OPPORTUNITY (EEO).**

(a) The Municipality shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment without discrimination because of race creed, color, national origin, sex, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of completion. If the Municipality does not have an existing EEO policy. Section 3(b)(iv) of the State Grant Contract may be use to develop one.

(b) The Municipality will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status , will undertake or continue existing EEO programs to ensure that minority group members and women are afforded and equal employment opportunities without discrimination and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in the work force in connection with this License Agreement.

(c) The Municipality shall state in all solicitations or advertisements for employees that, in the performance of this License Agreement, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

(d) The Municipality shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national original, sex, age, disability or marital status that such union or representative will affirmatively cooperate in the implementation of the County's obligations herein in connection with this License Agreement.

(e) The Municipality shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional nondiscrimination provisions. The Municipality shall not discriminate against any employee or applicant for employment because of race, creed (religions), color, sex, national origin, sexual orientation, military status, age,

disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(f) The Municipality will take all necessary affirmative steps to assure that minority forms, women's business enterprises, and labor surplus are firms are used when possible.

34. **AUDIT:** The Municipality will allow the State Agency to conduct periodic visits for the purposes of inspection, inventory of the Equipment and auditing the records required hereunder. The Municipality shall provide or complete any other reports necessary for the County to report to the State Agency or federal government with regard to the State Grant Equipment. This License Agreement may be subject to fiscal and program audits by DHSES, NYS Office of State Comptroller, pertinent federal agencies, and other designated entities to ascertain financial compliance with federal and/or State laws, regulation, and guidelines applicable to the Contract. The Municipality shall meet all audit requirements of the federal government and State of New York.

**IN WITNESS WHEREOF**, The County of Westchester and the Municipality have caused this Agreement to be executed.

**THE COUNTY OF WESTCHESTER**

By: \_\_\_\_\_  
John M. Cullen  
Commissioner of Emergency Services

**MUNICIPALITY**

By: \_\_\_\_\_  
(Name and Title)

Authorized by the Westchester County Board of Acquisition and Contract on the \_\_\_\_\_ day of \_\_\_\_\_.

Authorized by the Municipality on \_\_\_\_\_.

Approved as to form and manner of execution:

\_\_\_\_\_  
Sr. Assistant County Attorney  
The County of Westchester  
K: noe/dit/license agreement with agencies/final

**MUNICIPALITY'S ACKNOWLEDGEMENT**

STATE OF NEW YORK        )  
  ) ss.:  
COUNTY OF WESTCHESTER)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me personally came  
\_\_\_\_\_, to me known, and known to me to be the  
\_\_\_\_\_ of \_\_\_\_\_,  
the municipal corporation described in and which executed the within instrument, who being by me  
duly sworn did depose and say that he, the said \_\_\_\_\_ resides at  
\_\_\_\_\_  
and that he is \_\_\_\_\_ of said municipal corporation.

\_\_\_\_\_  
Notary Public        County

**CERTIFICATE OF AUTHORITY**  
**(Municipality)**

I, \_\_\_\_\_,  
(Officer other than officer signing contract)  
certify that I am the \_\_\_\_\_ of the \_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Name of Municipality)

(the "Municipality") a corporation duly organized in good standing under the

\_\_\_\_\_  
(Law under which organized, e.g., the New York Village  
Law, Town Law, General Municipal Law)

named in the foregoing agreement that \_\_\_\_\_  
(Person executing agreement)

who signed said agreement on behalf of the Municipality was, at the time of execution  
\_\_\_\_\_ of the Municipality,  
(Title of such person),

that said agreement was duly signed for on behalf of said Municipality by authority of its  
\_\_\_\_\_  
(Town Board, Village Board, City Council)

thereunto duly authorized, and that such authority is in full force and effect at the date hereof.

\_\_\_\_\_  
(Signature)

STATE OF NEW YORK )  
                          ss.:  
COUNTY OF WESTCHESTER)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me personally came \_\_\_\_\_  
\_\_\_\_\_ whose signature appears above, to me known, and know to be the  
\_\_\_\_\_ of \_\_\_\_\_,  
(title)

the municipal corporation described in and which executed the above certificate, who being by  
me duly sworn did depose and say that he, the said \_\_\_\_\_  
resides at \_\_\_\_\_, and that he is  
the \_\_\_\_\_ of said municipal corporation.  
(title)

\_\_\_\_\_  
Notary Public                  County

### Schedule "A"

Location & Alias	1 Head Mobile	2 Head Mobile	HT	CS	M/Std Mic.	M/Key Mic	HT Case	HT STD Sp/Mic	HT ENH Sp/Mic	12VDC Charger	110VAC Charger
City of Rye FD	5	3	4	1	0	11	3	0	4	3	1
DPT 242			1	1					1		1
2421		1	1			2	1		1	1	
2422		1	1			2	1		1	1	
2423		1	1			2	1		1	1	
E191	1					1					
E192	1					1					
E193	1					1					
L25	1					1					
U39	1					1					

**SCHEDULE "B"**

**WESTCHESTER COUNTY EQUIPMENT/PROPERTY RECORDS**

**Motorola APX8500 All Band Radio Transceiver:**

This equipment/ property tracking form must be completed annually by the agency that received equipment from the County of Westchester. This is a legal requirement of the State and Federal Government to track grant funded property and must be completed until the time the equipment is deemed to reach end of life or is no longer operable. Property shall not be transferred or disposed of without County permission. This form must be completed and returned to the Dept. of Emergency Services, 4 Dana Road, Valhalla, NY 10595 by January 31 of each year.

Date: \_\_\_\_\_

Agency: \_\_\_\_\_

Address: \_\_\_\_\_

Primary POC: (Name)  
Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Primary

Secondary POC: (Name)  
Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Primary

1	2	3	4	5	6	7
Property:	Serial Number	Unit Assigned	Alias	Dual Head or Single Head	Radio Condition	Antenna Condition
Motorola APX8500	681CUD1621	Chef's Vehicles	Car 2021	Dual head	New	New

Unit Condition: N-New, E-Excellent, G- Good, P-Poor, OOS- Out of Service

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## SCHEDULE "C"

### QUESTIONNAIRE REGARDING BUSINESS ENTERPRISES OWNED AND CONTROLLED BY WOMEN OR PERSONS OF COLOR

As part of the County's program to encourage the meaningful and significant participation of business enterprises owned and controlled by persons of color or women in County contracts, and in furtherance of Section 308.01 of the Laws of Westchester County, completion of this form is required.

A "business enterprise owned and controlled by women or persons of color" means a business enterprise, including a sole proprietorship, limited liability partnership, partnership, limited liability corporation, or corporation, that either:

- 1.) meets the following requirements:
  - a. is at least 51% owned by one or more persons of color or women;
  - b. is an enterprise in which such ownership by persons of color or women is real, substantial and continuing;
  - c. is an enterprise in which such ownership interest by persons of color or women has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and
  - d. is an enterprise authorized to do business in this state which is independently owned and operated.
- 2.) is a business enterprise certified as a minority business enterprise ("MBE") or women business enterprise ("WBE") pursuant to Article 15-a of the New York State Executive Law and the implementing regulations, 9 New York Code of Rules and Regulations subtitle N Part 540 et seq., **OR**
- 3.) is a business enterprise certified as a small disadvantaged business concern pursuant to the Small Business Act, 15 U.S.C. 631 et seq., and the relevant provisions of the Code of Federal Regulations as amended.

Please note that the term "persons of color," as used in this form, means a United States citizen or permanent resident alien who is and can demonstrate membership of one of the following groups:

- (a) Black persons having origins in any of the Black African racial groups;
- (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin regardless of race;
- (c) Native American or Alaskan native persons having origins in any of the original peoples of North America; or
- (d) Asian or Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.

1. Are you a business enterprise owned and controlled by women or persons of color in accordance with the standards listed above?

\_\_\_\_\_ No

\_\_\_\_\_ Yes

**Please note: If you answered "yes" based upon certification by New York State and/or the Federal government, official documentation of the certification must be attached.**

2. If you answered "Yes" above, please check off below whether your business enterprise is owned and controlled by women, persons of color, or both.

\_\_\_\_\_ Women

\_\_\_\_\_ Persons of Color (*please check off below all that apply*)

\_\_\_\_\_ Black persons having origins in any of the Black African racial groups

\_\_\_\_\_ Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin regardless of race

\_\_\_\_\_ Native American or Alaskan native persons having origins in any of the original peoples of North America

\_\_\_\_\_ Asian or Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian sub-continent or the Pacific Islands

Name of Business Enterprise: \_\_\_\_\_

Address: \_\_\_\_\_

Name and Title of person completing questionnaire: \_\_\_\_\_

Signature: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Date



**SCHEDULE "E"**

**Certification Regarding Lobbying**  
**Certification for Contracts, Grants, Loans,**  
**and Cooperative Agreements**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member or Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, A Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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Organization

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Authorized Signature      Title                      Date

**NOTE:** If Disclosure Forms are required, please contact: Mr. Will Sexton, Deputy Director, Grants and Contracts Management Division, Room 341F, HHH Building, 200 Independence Avenue, SW, Washington, D.C. 20201-0001

**SCHEDULE "F"**

**CERTIFICATION REGARDING DEBARMENT AND SUSPENSION**

1) As required by Federal Executive Order 12549, and prescribed by federal regulations, including 48 C.F.R. Subpart 9.4, the Contractor certifies that it, and its principals:

(a) Are not presently disbarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any Federal department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction, including any violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a Government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (b) above; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2) Where the Contractor is unable to certify to any of the statements in this paragraph, the Contractor shall attach an explanation to this certification.

Date: \_\_\_\_\_

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Organization**

## SCHEDULE "G"

### **DIVISION OF HOMELAND SECURITY AND EMERGENCY SERVICES Grant Assurances and Certifications for Federally-Funded Grants**

The certifications herein shall be treated as a material representation of fact upon which reliance will be placed when the State of New York and/or the Federal Emergency Management Agency (FEMA) determines to award the covered transaction, grant, or cooperative agreement.

*As the duly authorized representative of the applicant, I certify that the applicant agrees to comply with the following:*

#### **FOR U.S. DEPARTMENT OF HOMELAND SECURITY GRANTS AND U .S. DEPARTMENT OF TRANSPORTATION GRANTS:**

1. The administrative, cost principles, and audit requirements that apply to these funds originate from 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, as adopted by DHS at 2 CFR Part 3002.
2. **Lobbying.** As required by 31 USC §1352, and implemented at 44 CFR Part 18, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 44 CFR Part 18, the applicant certifies that:
  - a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;
  - b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, 'Disclosure of Lobbying Activities,' in accordance with its instructions;
  - c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. Debarment, Suspension and other Responsibility Matters (Direct Recipient). Applicant agrees that it will not make any award or permit any award (subgrant or contract) to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549 and 12689, "Debarment and Suspension". As required by Executive Order 12549, Debarment and Suspension, and implemented at 44 CFR Part 17, for prospective participants in primary covered transactions, the applicant certifies that it and its principals:

- a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency;
- b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and
- d) Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

4. Drug-Free Workplace (Grantees other than Individuals). Recipients are required to comply with the Drug-Free Workplace Act of 1988 (41 USC §701 et seq.), adopted at 2 CFR Part 3001, which requires that all organizations receiving grants from any Federal agency agree to maintain a drug-free workplace. DHS has adopted the Act's implementing regulations at 2 CFR Part 3001.

5. Applicant agrees that it will comply with all applicable Federal statutes, regulations, policies, guidelines, and requirements, including Office of Management and Budget (OMB) Circular A-102, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (also known as the "A-102 Common Rule"), found under FEMA regulations at Title 44, Code of Federal Regulations (CFR) Part 13, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." - OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, relocated to 2 CFR Part 215. The requirements for allowable costs/cost principles are contained in the A-102 Common Rule, OMB Circular A-110 (2 CFR § 215.27), DHS program legislation, Federal awarding agency regulations, and the terms and conditions of the award. The four costs principles circulars are as follows: - OMB Circular A-21, Cost Principles for Educational Institutions, relocated to 2 CFR

Part 220. - OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments, relocated to 2 CFR Part 225. - OMB Circular A-122, Cost Principles for Non-Profit Organizations, relocated to 2 CFR Part 230. – OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations.

6. Applicant agrees that it has the legal authority to apply for federal assistance and the institutional, managerial, and financial capability (including funds sufficient to pay any required non-federal share of project cost) to ensure proper planning, management, and completion of the project described in this application.

7. Applicant agrees that it will comply with the provisions of the Hatch Act (5 U.S.C. Sections 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

8. Applicant agrees that it will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. Section 276a to 276a-7), the Copeland Act (40 U.S.C. Section 276c and 18 U.S.C. Sections 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. Sections 327-333), regarding labor standards for Federally-assisted construction sub-agreements.

9. Applicant agrees that it will give the awarding agency, the Comptroller General of the United States and the State, through any authorized representative, access to and the right to examine all paper or electronic records related to the financial assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

10. Applicant agrees that it will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain for themselves or others, particularly those with whom they have family, business or other ties.

11. Applicant agrees that it will initiate and complete the work within the applicable time frame after receipt of approval from the awarding agency.

12. Applicant agrees that it will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. Section 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in OPM's Standards for a Merit System of Personnel Administration) 5 CFR Part 900, Subpart F.

13. All recipients must comply with Title VI of the *Civil Rights Act of 1964* (42 U.S.C. § 2000d *et seq.*), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Implementing regulations for the Act are found at 6 C.F.R. Part 21 and 44 C.F.R. Part 7.

14. All recipients must comply with the *Title VI of the Civil Rights Act of 1964* (Title VI) prohibition against discrimination on the basis of national origin, which requires that recipients

of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. Providing meaningful access for persons with LEP may entail providing language assistance services, including oral interpretation and written translation. In order to facilitate compliance with Title VI, recipients are encouraged to consider the need for language services for LEP persons served or encountered in developing program budgets. Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency* (August 11, 2000), requires federal agencies to issue guidance to recipients, assisting such organizations and entities in understanding their language access obligations. DHS published the required recipient guidance in April 2011, *DHS Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, 76 Fed. Reg. 21755-21768, (April 18, 2011). The Guidance provides helpful information such as how a recipient can determine the extent of its obligation to provide language services; selecting language services; and elements of an effective plan on language assistance for LEP persons. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

15. Applicant agrees that planned expenditures utilizing grant funds are consistent with needs as identified in the State Homeland Security Strategy and will be deployed in conformance with that Strategy.

16. All recipients who receive awards made under programs that prohibit supplanting by law must ensure that Federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-Federal sources. Where federal statutes for a particular program prohibits supplanting, applicants or recipients may be required to demonstrate and document that a reduction in non-Federal resources occurred for reasons other than the receipt of expected receipt of Federal funds.

17. All recipients who collect Personally Identifiable Information (PII) are required to have a publicly-available privacy policy that describes what PII they collect, how they use PII, whether they share PII with third parties, and how individuals may have their PII corrected where appropriate. Award recipients may also find as useful resources the DHS Privacy Impact Assessments: visit [www.dhSES.gov/policy](http://www.dhSES.gov/policy).

18. Unless otherwise provided by law, recipients are subject to the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and codified in 35 U.S.C. § 200 et seq. All recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from financial assistance awards are in 37 C.F.R. Part 401 and the standard patent rights clause in 37 C.F.R. § 401.14.

19. Any cost allowable to a particular Federal award provided for in 2 CFR Part 200, Subpart E may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by federal statutes, regulations or terms and conditions of the Federal awards or for other reasons. However, this prohibition would not preclude the non-Federal entity from shifting

costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations or the terms and conditions of the Federal awards.

20. All recipients must comply with the requirements of 42 USC §6201 which contain policies relating to energy efficient that are defined in the state energy conservation plan issues in compliance with this Act.

21. All recipients must report each action that obligations \$25,000 or more in Federal funds that does not include Recovery Funds (as defined in §1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L 111-5) for a subaward to an entity, unless provided in paragraph D as required by 2 CFR part 170, "Reporting Subaward and Executive Compensation Information" and the Federal Funding Accountability and Transparency Act 2006 (FFATA). Recipients must register at [www.sam.gov](http://www.sam.gov) and report information about each obligating action in accordance with the submission instructions posted at [www.frs.gov](http://www.frs.gov).

22. All recipients must maintain the currency of the information in the SAM until submission of the final financial report required under the award or receive final payment, whichever is later, as required by 2 C.F.R. Part 25.

23. All recipients must comply with the requirements of 31 USC §3729 which set forth that no recipient of federal payments shall submit a false claim for payment. See also 38 USC §3801-3812 which details the administrative remedy for false claims and statements made.

24. All recipients are required to be non-delinquent in their repayment of any Federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowance and benefit overpayments. See OMB Circular A-129 and form SF-424B, item number 17 for additional information and guidance.

25. All recipients must comply with Preference for U.S. Flag Air Carriers: (air carriers holding certificates under 49 USC §41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 USC §40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981 amendment to the Comptroller General Decision B-138942.

26. In accordance with Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 USC §2225a, all recipients must ensure that all conference, meeting, convention, or training space funded in whole or in part with Federal funds complies with the fire prevention and control guidelines of the Federal Fire Prevention and Control Act of 1974, as amended, 15 USC §2225.

27. All recipients must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded

\$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

28. Applicant agrees that it will comply with all provisions of 48 CFR §31.2, Federal Acquisition Regulations (FAR), Contracts with Commercial Organizations.

29. All recipients who have contracts exceeding the acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by Civilian Agency Acquisition Council and the Defense Acquisition Regulation Council as authorized by 41 U.S.C. §1908, must address administrative, contractual, or legal remedies in instance where contractors violate or breach contract terms and provide for such sanctions and penalties as appropriate.

30. All recipients that have contracts exceeding \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

31. Applicant agrees that it will comply with all lawful requirements imposed by the awarding agency, specifically including any applicable regulations, such as 28 C.F.R. pts. 18, 22, 23, 30, 35, 38, 42, 61, and 63.

32. Applicant agrees that it will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

33. All recipients who receive awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

34. All recipients must comply with U.S. Executive Order 13224 and U.S. law that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of recipients to ensure compliance with the E.O. and laws.

35. Applicant agrees that it will comply with requirements that publications or other exercise of copyright for any work first produced under Federal financial assistance awards hereto related unless the work includes any information that is otherwise controlled by the Government (e.g., classified information or other information subject to national security or export control laws or regulations). For any scientific, technical, or other copyright work based on or containing data first produced under this award, including those works published in academic, technical or professional journals, symposia proceedings, or similar works, the recipient grants the Government a royalty-free, nonexclusive and irrevocable license to reproduce, display, distribute copies, perform, disseminate, or prepare derivative works, and to authorize others to do so, for Government purposes in all such copyrighted works. The recipient shall affix the applicable

copyright notices of 17 U.S.C. §§401 or 402 and an acknowledgement of Government sponsorship (including award number) to any work first produced under an award.

36. Applicant agrees that it will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.

37. Applicant agrees that it will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms to the approved plans and specifications and will furnish progress reports and such other information as may be required by such other information as may be required by the assistance awarding agency or state.

38. Applicant agrees that it will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. Section 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

39. Applicant agrees that it will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. Section 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. Section 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

40. Applicant agrees that it will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. Section 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

41. Applicant agrees that it will assist the awarding agency (if necessary) in assuring compliance with section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. § 470), Ex. Order 11593 (identification and protection of historic properties), the Archeological and Historical Preservation Act of 1974 (16 U.S.C. § 469 a-1 et seq.), and the National Environmental Policy Act of 1969 (42 U.S.C. § 4321).

42. Applicant agrees that it will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin (implementing regulations are found at 6 CFR Part 21 and 44 CFR Part 7); (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. Sections 1681-1683, and 1685-1686; Implementing regulations are codified at 6 C.F.R. Part 17 and 44 C.F.R. Part 19), which prohibits discrimination on the basis of sex from participation in, be denied the benefits of, or be

subjected to discrimination under any educational program or activity receiving Federal financial assistance; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Section 794, as amended), which provides that no otherwise qualified handicapped individual in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance (these requirements pertain to the provision of benefits or services as well as to employment); (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §6101 *et seq.*), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290-dd-3 and 290-ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Acts of 1968 (42 U.S.C. § 3601 *et seq.*), as amended, which prohibits discrimination in the sale, rental or financing of housing on the basis of race, color, national origin, religion, disability, familial status and sex (implementing regulations are found at 24 CFR Part 100). The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units – i.e., the public and common use areas and individual apartment units (all units in building with elevators and ground-floor units in buildings without elevators) – be designed and constructed with certain accessible features (see 24 CFR §100.201); (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

43. All recipients must comply with the requirements of the government-wide award term which implements Section 106(g) of the *Trafficking Victims Protection Act (TVPA) of 2000*, as amended (22 U.S.C. § 7104). This is implemented in accordance with OMB Interim Final Guidance, *Federal Register*, Volume 72, No. 218, November 13, 2007. Full text of the award term is located at 2 CFR § 175.15.

44. All recipients must comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§12101-12213).

45. Applicant agrees that it will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act (29 U.S.C. 201), as they apply to employees of institutions of higher education, hospitals, and other non-profit organizations.

46. Applicant agrees that it will comply with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.* [P.L. 91-646]) which provides for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or Federally assisted programs. These requirements apply to all interested in real property acquired for project purposes regardless of Federal participation in purchases.

47. Applicant agrees that will comply with Title 44 CFR, Part 25, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-assisted programs.
48. Applicant agrees that, to the extent contractors or subcontractors are utilized, will use small, minority-owned, women-owned, or disadvantaged business concerns and contractors or subcontractors to the extent practicable.
49. Applicant agrees that it will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996, and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
50. Applicant agrees that it will obtain approval by the appropriate Federal agency of the final working drawings and specifications before the project is advertised or placed on the market for bidding; that it will construct the project, or cause it to be constructed, to final completion in accordance with the application and approved plans and specifications; that it will submit to the appropriate Federal agency for prior approval, changes that alter the cost of the project, use of space, or functional layout, that it will not enter into a construction contract(s) for the project or undertake other activities until the conditions of the construction grant program(s) have been met.
51. Applicant agrees that it will operate and maintain the facility in accordance with the minimum standards as may be required or prescribed by the applicable Federal, State, and local agencies for the maintenance and operation of such facilities.
52. Applicant agrees that it will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
53. Applicant agrees that it will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
54. Applicant agrees that it will comply with the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act), which amends 18 U.S.C. §§ 175-175c. Among other things, it prescribes criminal penalties for possession of any biological agent, toxin, or delivery system of a type or in a quantity that is not reasonably justified by a prophylactic, protective, bona fide research, or other peaceful purpose.
55. All recipients must comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C §2409, 41 U.S.C. 4712, and 10 U.S.C. § 2324, 41 U.S.C. §§ 4304 and 4310.
56. Applicant agrees that it will require the facility to be designed to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the

Physically Handicapped," Number A117. - 1961, as modified (41 CFR 101-17.703). The applicant will be responsible for conducting inspections to ensure compliance with these specifications by the contractor.

57. Applicant agrees that if any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the applicant, this assurance shall obligate the applicant, or in the case of any transfer of such property, any transfer, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

58. Any cost allocable to a particular Federal award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons. However, this prohibition would not preclude the non-Federal entity from shifting costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations, or the terms and conditions of the Federal awards.

59. Applicant agrees that it will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

60. All recipients must acknowledge their use of federal funding when issuing statements, press releases, and requests for proposals, bid invitations and other documents describing projects or programs funded in whole or in part with Federal funds.

61. All recipients must ensure that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits or approvals are obtained.

62. Applicant agrees that in making subgrants with nonprofit institutions under this Comprehensive Cooperative Agreement, it agrees that such grants will be subject to OMB Circular A-122, "Cost Principles for Non-profit Organizations" included in Vol. 49, Federal Register, pages 18260 through 18277 (April 27, 1984).

#### **FOR U.S. DEPARTMENT OF HOMELAND SECURITY GRANTS:**

63. All recipients must acknowledge and agree—and require any sub-recipients, contractors, successors, transferees, and assignees acknowledge and agree—to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff:

- Recipients must cooperate with any compliance review or complaint investigation conducted by DHS.

- Recipients must give DHS access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations *and* other applicable laws or program guidance.
- Recipients must obtain DHS's approval prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.
- Recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports.
- Recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.
- If, during the past three years, the recipient has been accused of discrimination on the grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status, the recipient must provide a list of all such proceedings, pending or completed, including outcome and copies of settlement agreements to the DHS awarding office and the DHS Office of Civil Rights and Civil Liberties. In the event any court or administrative agency makes a finding of discrimination on grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status against the recipient, or the recipient settles a case or matter alleging such discrimination, recipients must forward a copy of the complaint and findings to the DHS Component and/or awarding office.
- The United States has the right to seek judicial enforcement of these obligations.

**FOR U.S. DEPARTMENT OF TRANSPORTATION HAZARDOUS MATERIALS EMERGENCY PREPAREDNESS GRANTS:**

- Title VI of the Civil Rights Act of 1964 (42 USC §2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR Part 21 (entitled Non-discrimination In Federally-Assisted Programs of the Department of Transportation – Effectuation of the Civil Rights Act of 1964);
- 28 CFR §50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);
- Section 504 of the Rehabilitation Act of 1973, (29 USC §794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 USC §6101 *et seq.*), (prohibits discrimination on the basis of age);

- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and §504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the program or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
  - Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation and certain testing entities (42 USC §12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR Parts 37 and 38;
  - Title IX of the Education Amendments of 1972, as amended, which prohibits you from discrimination because of sex in education programs or activities (20 USC §1681 et seq.)
- The preceding statutory and regulatory cites hereinafter are referred to as the “Acts” and “Regulations,” respectively.

#### General U.S. DOT Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

“No person in the United States shall, on the grounds of race, color, national origin, gender, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity,” for which the Recipient receives Federal financial assistance from DOT, including the Pipeline and Hazardous Materials Safety Administration.

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age of Discrimination Act of 1975, and §405 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

#### Specific U.S. DOT Assurances

More specifically, and without limiting the above General Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted Hazardous Materials Emergency Preparedness Grant Program:

1. The Recipient agrees that each “activity,” “facility,” or “program,” as defined in §§ 21.23(b) and 21.23(e) of 49 CFR §21 will be (with regard to an “activity”) facilitated, or will be (with regard a “facility”) operated, or will be (with regard to a “program”) conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.

2. The Recipient will insert the following notification in all solicitations for bids, Requests for Proposals for work, or material subject to the Acts and the Regulations made in connection with all Hazardous Materials Emergency Preparedness Grant Program and, in adapted from, in all proposals for negotiated agreements regardless of funding source:  
  
“The [Entity Name], in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§2000d to 2000d-4) and the Regulations, hereby notified all bidders that it will affirmatively ensure that with respect to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color or national origin in consideration for an award.”
3. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.
4. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United State effecting or recording a transfer of real property, structures, use or improvements thereon or interest therein to a Recipient.
5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
7. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permit or similar instruments entered into by the Recipient with other parties:
  - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
  - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures to improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
  - a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or

- b. the period during which the Recipient retains ownership or possession of the property.
9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipient, subrecipients, subgrantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all required imposed or pursuant to the Acts, the Regulations and this Assurance.
  10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under these Acts, the Regulations, and this Assurance.

By signing this Assurance, the Grantee also agrees to comply (and require any subrecipients, subgrantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the Pipeline and Hazardous Materials Safety Administration access to records, accounts, documents, information, facilities and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by the Pipeline and Hazardous Materials Safety Administration. You must keep records, reports, and submit the material for review upon request to the Pipeline and Hazardous Materials Safety Administration, or its designee in a timely, complete and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

The Grantee give this Assurance in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the Hazardous Materials Emergency Preparedness Grant Program. This Assurance is binding on Grantee, other recipients, subrecipients, subgrantees, contractor, subcontractors and their subcontractors, transferees, successors in interest, and any other participants in the Hazardous Materials Emergency Preparedness Grant Program.

*The undersigned represents that he/she is authorized by the above named applicant to enter into this agreement for and on behalf of the said applicant.*

**APPLICANT/GRANTEE ACCEPTANCE OF CERTIFIED ASSURANCES (Signature of Chief Executive of Unit of Local Government or Community Organization, or State Agency Head)**

(Signature)	(Date)
Name: _____	
Title: _____	
Address: _____	



## APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, as they may be amended from time to time, which are herein incorporated by reference and make a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations including employment practices when the contract covers any activity, project, or program set forth in Append B of 49 CFR Part 21 (Including Modal Operating Administration specific program requirements).
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and Regulations relative to non-discrimination on the grounds of race, color or national origin. (Including Modal Operating Administration specific program requirements).
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Pipeline and Hazardous Materials Safety Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Nondiscrimination provisions of this Contract, the Recipient will impose such contract sanctions as it or the Pipeline and Hazardous Materials Safety Administration may determine to be appropriate, including but not limited to:
  - a. Withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. Cancelling, terminating or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of

equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Pipeline Hazardous Materials Safety Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

**Appendix B**  
**Clauses for Deeds Transferring United States Property**

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

**NOW, THEREFORE**, the U.S. Department of Transportation as authorized by law and upon the condition that the (Title of Recipient) will accept title to the lands and maintain the project constructed thereon in according with (Name of Appropriate Legislative Authority), the Regulations of the Administration (Name of Appropriate Program), and the policies and procedures prescribed by the Pipeline and Hazardous Materials Safety Administration of the U.S. Department of Transportation in accordance and compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 USC sections 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the (Title of Recipient) all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

**(HABENDUM CLAUSE)**

**TO HAVE AND TO HOLD** said lands and interests therein unto (Title of Recipient) and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on (Title of Recipient), its successors and assigns.

The (Title of Recipient), in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds or race, color, or national origin, be excluded from participation in, be denied the benefit of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]\* (2) that the (Title of Recipient) will use the lands and interest in lands and interest in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended [, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above descried land and facilities will thereon revert to such and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interested existed prior to this instruction].\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

### **Appendix C**

#### **Clauses for the Transfer of Real Property Acquired or Improved Under the Activity, Facility or Program**

The following clauses will be added in deeds, leases, permits, or similar instruments entered into by the (Title of Recipient) pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, Permittee, etc. as appropriate) for himself/herself, his/her heirs, person representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:
  1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, Permittee, etc.) will maintain and operate such facilities and services in compliance will all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds or race, color, or national origin, be excluded from participation in, be denied the benefit of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc. in the event of breach of any of the above Non-discrimination covenants, (Title of Recipient) will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued. \*
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the (Title of Recipient) will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the (Title of Recipient) and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)



**Appendix D**  
**Clauses for the Construction of Real Property Acquired or Improved Under the Activity,  
Facility or Program**

The following clauses will be added in deeds, leases, permits, or similar instruments entered into by the (Title of Recipient) pursuant to the provisions of Assurance 7(b):

- A. The (grantee, lessee, Permittee, etc. as appropriate) for himself/herself, his/her heirs, person representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add "as a covenant running with the land" that (1) no person on the grounds or race, color, or national origin, be excluded from participation in, be denied the benefit of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the grounds or race, color, or national origin, be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, Permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and the Regulations, as amended, set forth in this Assurance.
  
- B. With respect to licenses, leases, permits, etc. in the event of breach of any of the above Non-discrimination covenants, (Title of Recipient) will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued. \*
  
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the (Title of Recipient) will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the (Title of Recipient) and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

## Appendix E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following Non-discrimination statutes and authorities, including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC §2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.* [P.L. 91-646]) which provides for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or Federally assisted programs;
- Federal-Aid Highway Act of 1973 (23 USC section 324 *et seq.*), which prohibits discrimination on the basis of sex;
- Section 504 of the Rehabilitation Act of 1973, (29 USC §794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 USC §6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement act of 1982 (49 USC section 471, section 47123), as amended which prohibits discrimination based on race, creed, color, national origin, or sex;
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and §504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the program or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation and certain testing entities (42 USC §12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR Parts 37 and 38;
- Federal Aviation's Non-discrimination statute (49 USC section 47123) which prohibits discrimination on the basis of race, color, national origin and sex;
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency* (August 11, 2000), requires federal agencies to issue guidance to recipients, assisting such organizations and entities in understanding their language access obligations for persons with limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- **Title IX of the Education Amendments of 1972, as amended, which prohibits you from discrimination because of sex in education programs or activities (20 USC §1681 et seq.)**



# CITY COUNCIL AGENDA

DEPT.: Planning

DATE: May 13, 2020

CONTACT: Christian K. Miller, City Planner

**AGENDA ITEM:** Continue SEQRA discussion regarding a zoning petition from The Miriam Osborn Memorial Home to amend the text of the City of Rye Zoning Code Association to create a new use and development standards for “Senior Living Facilities” in the R-2 Zoning District.

**FOR THE MEETING OF:**

May 13, 2020

**RYE CITY CODE,  
CHAPTER  
SECTION**

**RECOMMENDATION:** That the City Council make a SEQRA determination since they are lead agency.

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:** The City Council has received a petition from Miriam Osborn Memorial Home Association (“The Osborn”) to amend Chapter 197, *Zoning*, of the City Code to allow “Senior Living Facilities” (“SLF”) in the City’s R-2, *Single-Family Residence*, District. The petition submitted by The Osborn seeks to amend the text of the City Zoning Code to allow SLF in the City’s R-2 District. The proposed amendment would allow SLF as a new permitted use in the R-2 Residence District on those properties with 50 or more contiguous acres. The proposed amendment also includes new restrictions and requirements regarding maximum floor area, building setbacks, lot coverage and other development standards.

As currently proposed, the amendment would only apply to property currently owned by The Osborn. This property is the only property currently located in the R-2 District that meets the proposed 50-acre minimum lot area requirement. Currently, The Osborn is regulated outside of the City Zoning Code by way of a Declaration of Covenants and Restrictions, dated October 15, 1993.

The proposed amendment would regulate land use at The Osborn to include new standards that would allow The Osborn to make improvements to its campus that the current Covenants and Restrictions do not allow.



# CITY COUNCIL AGENDA

DEPT.: Planning

DATE: May 13, 2020

CONTACT: Christian K. Miller, City Planner

**AGENDA ITEM:** Open a public hearing for consideration of a petition from The Miriam Osborn Memorial Home to amend the text of the City of Rye Zoning Code Association to create new use and development standards for “Senior Living Facilities” in the R-2 Zoning District.

**FOR THE MEETING OF:**

May 13, 2020

**RYE CITY CODE,  
CHAPTER  
SECTION**

**RECOMMENDATION:** That the City Council open the public hearing.

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:** The City Council has received a petition from Miriam Osborn Memorial Home Association (“The Osborn”) to amend Chapter 197, *Zoning*, of the City Code to allow “Senior Living Facilities” (“SLF”) in the City’s R-2, *Single-Family Residence*, District. The petition submitted by The Osborn seeks to amend the text of the City Zoning Code to allow SLF in the City’s R-2 District. The proposed amendment would allow SLF as a new permitted use in the R-2 Residence District on those properties with 50 or more contiguous acres. The proposed amendment also includes new restrictions and requirements regarding maximum floor area, building setbacks, lot coverage and other development standards.

All public hearing comments should be emailed to [publichearingcomments@ryeny.gov](mailto:publichearingcomments@ryeny.gov) with “Osborn Zoning Change” as the subject.

As currently proposed, the amendment would only apply to property currently owned by The Osborn. This property is the only property currently located in the R-2 District that meets the proposed 50-acre minimum lot area requirement. Currently, The Osborn is regulated outside of the City Zoning Code by way of a Declaration of Covenants and Restrictions, dated October 15, 1993.

The proposed amendment would regulate land use at The Osborn to include new standards that would allow The Osborn to make improvements to its campus that the current Covenants and Restrictions do not allow.

George Latimer  
County Executive

May 8, 2020

Christian K. Miller, City Planner  
Rye City Planning Department  
1051 Boston Post Road  
Rye, NY 10580

**County Planning Board Referral File RYC 20-001 – The Osborn  
Zoning Text Amendment**

Dear Mr. Miller:

The Westchester County Planning Board has received a petition to amend the text of the City of Rye Zoning Ordinance to add “R-2 Senior Living Facilities” as a special exception use within the R2 – Residence District. The petition has been submitted by the Miriam Osborn Memorial Home Association with respect to their existing senior residential and nursing facility located at 101 Theall Road. The property is the subject of a Declaration of Covenants and Restrictions, dated October 15, 1993, which governs the dimensional regulations for the property. Currently, these dimensional regulations are not codified anywhere in the City’s Zoning Ordinance.

As proposed, the zoning amendments would essentially codify the site’s existing use and dimensional regulations into the ordinance as well as allow for future growth and the eventual establishment of additional facilities on the site. No specific proposals have been submitted at this time.

As proposed, the R-2 Senior Living Facilities regulations would permit multi-family residential campuses for the exclusive use of residents aged 55 or older, with a variety of housing types allowed, including independent and assisted living facilities, ambulatory services, and domiciliary care facilities. Ancillary services such as office space, staff residencies of employees under 55 years of age, food preparation areas, and other facilities would also be permitted.

R-2 Senior Living Facilities would only be permitted on lots of 50 acres or more. The maximum floor area ratio would be 0.45, and the building lot coverage could not exceed 15%, with a maximum impervious surface coverage of 35%. A maximum building height of four stories would be set, with five stories allowed under certain constraints. Extensive setback requirements would be included based on proximity to certain other zones or streets. Parking requirements would be 1.5 spaces per independent living unit, and 0.25 spaces for assisted living, skilled nursing, nursing home, and memory care facilities. Specific regulations are also included for building placement, floor area, and other site aspects.

We have reviewed the zoning petition under the provisions of Section 239 L, M and N of the General Municipal Law and Section 277.61 of the County Administrative Code and we offer the following comments:

**1. Affirmatively furthering fair housing.**

We recommend the regulations for R-2 Senior Living Facilities include a mandatory set aside of affordable affirmatively furthering fair housing (AFFH) units. While we understand that this is an amenitized form of housing, there is a dire need for affordable housing in Westchester County, as evidenced by the *Housing Needs Assessment*. We encourage the City to work with the applicant to provide a solution where a portion of these units can be set aside as affordable AFFH.

In addition, we strongly encourage the City to adopt the “Model Zoning Ordinance Provisions for Affordable Affirmatively Furthering Fair Housing Units” as included in the *Westchester County Fair and Affordable Housing Implementation Plan* (dated August 9, 2010).

**2. Parking requirement.**

We encourage the City to consider a lower minimum parking requirement for housing of this type. In our review of similar facilities, we have seen parking requirements as low as 0.7 spaces per unit for independent living units. We point out that requiring less parking does not mean that needed parking cannot be constructed. However, requiring a lower amount of parking may mean fewer impacts with respect to stormwater runoff and downstream flooding. We point out that the Osborn site drains to both Beaver Swamp Brook and Blind Brook, both of which have experienced flooding in recent years.

Please inform us of the City’s decision so that we can make it a part of the record.

Thank you for calling this matter to our attention.

Respectfully,  
WESTCHESTER COUNTY PLANNING BOARD

By: 

Norma V. Drummond  
Commissioner

**THE OSBORN**  
**CITY OF RYE**  
**WESTCHESTER COUNTY, NEW YORK**

**ZONING TEXT AMENDMENT**  
**PETITION**

Prepared for Submission To:

**CITY OF RYE**  
**CITY COUNCIL**

**MARCH 2020**

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# THE OSBORN

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## I. COVER LETTER

McGULLOUGH, GOLDBERGER & STAUDT, LLP

ATTORNEYS AT LAW

1311 MAMARONECK AVENUE, SUITE 340

WHITE PLAINS, NEW YORK

10605

(914) 949-6400

FAX (914) 949-2510

WWW.MCGULLOUGHGOLDBERGER.COM

FRANK S. McCULLOUGH (1905-1998)  
EVANS V. BREWSTER (1920-2005)

FRANK S. McCULLOUGH, JR.  
JAMES STAUDT  
LINDA B. WHITEHEAD  
SETH M. MANDELBAUM

AMANDA L. BROSY  
DEBORAH A. GOLDBERGER  
EDMUND C. GRAINGER, III  
PATRICIA W. GURAHIAN  
MEREDITH A. LEFF  
KEVIN E. STAUDT  
STEVEN M. WRABEL

CHARLES A. GOLDBERGER  
KEITH R. BETENSKY  
COUNSEL

March 11, 2020

Honorable Mayor Josh Cohn  
and members of the City Council  
City of Rye  
1050 Boston Post Road  
Rye, New York 10580

Re: The Osborn  
101 Theall Road  
Zoning Text Amendment

Dear Mayor Cohn and Members of the City Council:

This office represents Miriam Osborn Memorial Home Association (“The Osborn”), the owner and operator of the above-referenced property (the “Property”), which is the home of The Osborn’s senior living development. The Osborn’s facilities include memory care and assisted living, skilled nursing care, independent living apartments, and a number of associated improvements, including community facilities, office space, food preparation areas, and other support facilities needed to properly operate.

As you may recall, The Property is located in the R-2 “One-Family” Zoning District, but is currently governed by a Declaration of Covenants and Restrictions that was put in place with the City of Rye as part of The Osborn’s 1992 redevelopment. It has been suggested that the most beneficial path moving forward for all parties would be to codify the zoning and dimensional regulations that will affect The Osborn in the future.

The Osborn is in the process of developing its plans for the future, so that The Osborn campus may adapt to changing standards of care. This evolution is critical to ensure the best care and quality of life for The Osborn’s residents and to remain competitive in the rapidly changing senior living landscape. In order achieve these goals, The Osborn has determined that revisions to the City of Rye Zoning Ordinance (the “Zoning Ordinance”) are needed to allow greater flexibility in accommodating The Osborn’s future needs, and is therefore seeking a Zoning Text Amendment (the “Amendment”) to revise the Zoning Ordinance. Specifically, The Osborn has

requested the addition of a new “R-2 Senior Living” special exception use in the R-2 District, together with related bulk and dimensional requirements. The proposed revisions are intended to provide The Osborn with the necessary flexibility to meet the needs of its residents and the changing senior living and care giving industries.

We last appeared before the Council at its February 27, 2019 meeting, at which time our Petition was referred to the Rye Planning Commission for review and recommendation. Since that meeting, The Osborn has worked with the Planning Commission to refine the proposed zoning text amendment while still providing The Osborn with the flexibility it needs to remain competitive in the years to come. The Planning Commission has completed its review process, and it is our understanding that the Commission’s recommendation has now been sent to the Council.

During the course of the Planning Commission’s review the Applicant retained Divney Tung Schwalbe (“DTS”), a planning and engineering firm with extensive experience in Rye and the greater Westchester area. As a result of the diligent planning discussions with the Planning Commission, the Applicant made a number of revisions to the proposed Amendment. These changes reflect the input and consideration of both the Rye Planning Commission and the Applicant’s planning team. A copy of the revised Petition, together with an updated Amendment and a redline reflecting the changes to the Amendment is enclosed herewith.

Several of the proposed bulk requirements have been modified. Proposed FAR and permitted building coverage have been reduced, and required yard setbacks have been increased. The Applicant is now proposing to leave the existing 160-foot setback requirement in place on all sides of the Property to ensure no new development is placed any closer to Boston Post Road, the Osborn School, or single-family residences than what is already permitted. The Osborn also imposed additional planting and screening requirements to further protect residential neighbors and the Osborn School.

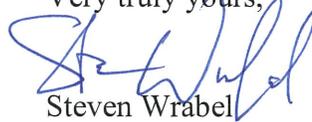
To provide even greater protection of neighbors, DTS and The Osborn developed an additional standard that significantly increases required setbacks from Osborn Road at the southwest corner of the site. The current proposal creates a setback in that area of the Property that is 1.5 times the 160-foot setbacks required elsewhere.

To allow some flexibility in future projects, and to prevent concentration of development at the center of The Osborn’s campus, limited reductions to 100-foot setbacks would be permitted along Theall Road and the northeastern side of the lot, where there are no single-family residential uses adjacent to or across from The Osborn. This setback is consistent with the front yard requirements in the surrounding B-4 and RA-6 Districts and represents a greater side yard requirement than what is mandated in the RA-6 District.

Finally, the revised Amendment has tiered the maximum permitted building height, requiring an increased setback requirement of 240 feet for buildings over four stories and 60 feet in height.

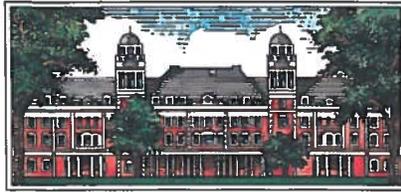
We believe the revised Amendment represents a well-considered change to the current Zoning Ordinance, which balances the needs of The Osborn with larger planning considerations. We are pleased to enclose herewith an amended Petition, together with several studies and analysis of the Property for the Council's review. It is respectfully requested this matter be placed on the next available City Council agenda, so that the Council may declare its intent to act as Lead Agency under SEQRA and consider setting a public hearing. We look forward to discussing this matter with you in greater detail.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Steven Wrabel", is written over the typed name below.

Steven Wrabel

cc: Greg G. Usry  
Kristen Wilson, Esq.  
Matthew G. Anderson  
Stephanie Larsen, Esq.  
Divney Tung Schwalbe



# The Osborn

*A tradition of gracious retirement living.*

November 28, 2018

Honorable Mayor Josh Cohn  
and Members of the City Council  
City of Rye  
1050 Boston Post Road  
Rye, New York 10580

Dear Mayor Cohn and Members of the City Council:

The Osborn was formed upon the death of Miriam A. Osborn in 1892, by an act of the New York State legislature, based on instructions in her will to establish a home to care for aged gentlewomen in needy circumstances. John W. Sterling, the executor of Mrs. Osborn's will, purchased the land on Theall's Hill in Rye upon which the original Osborn building was constructed and opened in 1908. Between 1950 and 1970, the board of The Osborn sold off hundreds of acres of landholdings surrounding the current 56-acre campus to generate funds for operations. Some land was sold to large companies for office space, some was sold for development of single-family homes, and some was sold to the Rye school district, which built Osborn Elementary School.

In the 1980's, The Osborn board sought to restore the institution to fiscal health and its charitable mission by adopting a comprehensive plan named "Pathway 2000". Under this plan, The Osborn intended to renovate and expand the facility to become a continuing care retirement community providing independent living, assisted living and skilled nursing care. In the early 1990's, The Osborn developed a plan for the expansion of its facilities on the Rye campus and made application to the City of Rye for approval of that plan.

Since the 1993 Covenants and Restrictions were established and the "Pathway 2000" project was completed, both health care and senior living have changed dramatically. For The Osborn to continue to innovate, evolve, and grow in the ever-changing competitive market, as well as meet the needs of seniors in the future, it must expand and update its core services, including newer Assisted Living facilities, additional memory care services, and independent living options with varied amenities. By allowing The Osborn to grow beyond its current restrictions, the City would assist The Osborn in positioning itself properly to succeed as a premier service provider and continue to be a significant taxpayer in Rye, as well as a good community partner.

Yours very truly,

Matthew G. Anderson  
President and CEO

# THE OSBORN

---

## II. PETITION

CITY OF RYE CITY COUNCIL  
COUNTY OF WESTCHESTER: STATE OF NEW YORK

-----X

In the Matter of the Petition of

MIRIAM OSBORN MEMORIAL HOME ASSOCIATION  
Petitioner,

**PETITION FOR  
AMENDMENT TO  
CITY OF RYE  
ZONING ORDINANCE**

For Amendment to the City of Rye  
Zoning Ordinance.

Parcel: 146-13-1-8

-----X

TO THE MAYOR AND MEMBERS OF THE CITY COUNCIL OF THE CITY OF RYE:

PETITIONER, MIRIAM OSBORN MEMORIAL HOME ASSOCIATION (“Petitioner”, or “The Osborn”), with its principal place of business at 101 Theall Road, Rye, New York 10580 hereby petitions the City Council of the City of Rye (“Rye”) for amendments to the Zoning Ordinance of Rye as follows:

**INTRODUCTION**

1. Miriam Osborn Memorial Home Association is a duly formed and existing not for profit corporation licensed to do business in the State of New York, with its principal place of business at 101 Theall Road, Rye, New York 10580.
2. Petitioner is the owner of a tract of land totaling approximately 55.8 acres of real property, which is the lot identified as 101 Theall Road, City of Rye, County of Westchester, State of New York, shown and designated on the City of Rye Tax Map as Tax Parcel 146-13-1-8 (hereinafter referred to as the “Property”). The Property is the site of The Osborn, a senior living facility comprised of memory care, assisted living units, skilled nursing care, independent living units, and various related community facilities.
3. The Property is located in the R-2 “One-Family” Zoning District in Rye.
4. The Property is the subject of a Declaration of Covenants and Restrictions, dated October 15, 1993 (the “Covenants and Restrictions”), which governs the dimensional regulations for the Property. Currently, these dimensional regulations are not codified anywhere in the City’s Zoning Ordinance.

5. The Property is located on the eastern side of Theall Road, between Osborn Road and Playland Access Drive, and it extends all the way to the western side of Boston Post Road. To the west of the Property, across Theall Road, are primarily office buildings, and a few multi-family and single-family residential lots. Across Boston Post Road, to the east, are single-family houses. Immediately adjacent to the Property along its northern border are the St Regis residences, in the RA-6 district. Along the southern border is the Osborn School, and additional single-family homes are located to the south across Osborn Road.

6. Currently, the Property is improved with a senior living campus, comprised of assisted living, memory care, and nursing home facilities, communal buildings, and independent living units. As The Osborn has grown, it has determined that the current facilities will not be able to adequately serve its needs and its residents in the future. As a result, the Petitioner is proposing to establish a new special exception use to allow for future growth and the eventual establishment of facilities needed for the continued and improved care of The Osborn's residents.

7. Therefore, Petitioner is hereby requesting that the City Council of Rye amend the Rye Zoning Ordinance to create a new use in the R-2 Zoning District, specifically a senior living campus use as a special exception use. This use would be established specifically for the benefit of larger properties uniquely situated for such uses within the City.

#### **EXISTING STRUCTURES AND USES ON THE PROPERTY**

8. The Property is approximately 55.8 acres and is presently improved with memory care and assisted living facilities, skilled nursing facilities, several garden homes and independent living units, communal amenities, food preparation facilities, offices, equipment storage areas, limited staff housing, and associated parking, landscaping, and security features.

#### **PROPOSED TEXT AMENDMENTS TO ZONING ORDINANCE**

9. Petitioner respectfully requests the adoption of a Local Law codifying a Zoning Text Amendment consisting of modifications to the Residence District Table of Use Regulations to permit a new "R-2 Senior Living" special exception use and associated accessory uses.

10. Petitioner is also proposing to revoke the Covenants and Restrictions affecting the Property, so that all dimensional and zoning requirements shall be codified in the Zoning Ordinance. Petitioner further requests that the City Council consent, by resolution, to the revocation of the Covenants and Restrictions in conjunction with approval of the Zoning Text Amendment.

11. A copy of the proposed Local Law for said Zoning Text Amendment is attached hereto and made a part hereof as Exhibit A.

12. The Zoning Text Amendment would not have any adverse impact on the Zoning Ordinance or the City of Rye for several reasons. First, the proposed Zoning Text Amendment would only affect properties of more than 50 acres located in the R-2 District.

13. In addition, the proposed Zoning Text Amendment will allow The Osborn to continue to thrive and maintain a high quality of care for its current and future residents. The Osborn has long been a member of the Rye community, and is committed to continuing its relationship with the City.

14. Furthermore, the proposed Zoning Text Amendment has included numerous standards to mitigate potential impacts and ensure the continued campus feel of The Osborn's Property.

15. For all of the foregoing reasons, it is respectfully submitted that the proposed Zoning Ordinance Amendments should be granted, and the Council should consent to the revocation of the Covenants and Restrictions.

**WHEREFORE**, Petitioners respectfully request that the City Council of Rye amend the Zoning Ordinance of Rye as set forth above.

Dated: Rye, New York  
March 6, 2020

Respectfully submitted,

MIRIAM OSBORN MEMORIAL HOME ASSOCIATION

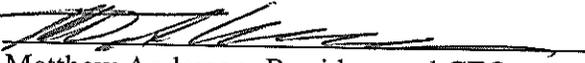
By:   
Matthew Anderson, President and CEO

EXHIBIT A

PROPOSED ZONING TEXT

**CITY COUNCIL  
CITY OF RYE, NEW YORK**

**LOCAL LAW NO. \_\_\_-2020**

**A LOCAL LAW TO REVISE THE ZONING ORDINANCE  
OF THE CITY OF RYE**

**Be it enacted by the City Council of the City of Rye as follows:**

**Section One.** Section 197-86 of the City of Rye Zoning Ordinance shall be amended by adding a new section (15) entitled “R-2 Senior Living Facilities” to Table A, Column 2, under the heading “R-1, R-2, R-3, R-4, R-5, R-6, RS and RT Districts”, which shall state as follows:

(15) R-2 Senior Living Facilities. In the R-2 District, an age restricted, multi-family residential facility in a campus setting providing a variety of housing types, including, but not limited to: independent living units, assisted living facilities, ambulatory services, and domiciliary care facilities, with healthcare support, including but not limited to availability of accessible units and assistance for residents with activities of daily living, and including other appropriate ancillary and accessory uses typically found in senior residential communities including, but not limited to, communal space, associated office space, equipment storage, residences for staff, support facilities, food preparation and service facilities, provided that:

- (a) Residents of R-2 Senior Living Facilities shall be limited to: (i) a single person 55 years of age or older; (ii) two or three persons, all of whom are 55 years of age or older; (iii) a married couple, live-in companion, or partner, one of which is 55 years of age or older; (iv) the surviving spouse of a person 55 years of age or older, provided that the surviving spouse was duly registered as a resident of the development at the time of the elderly person's death; and (v) one adult 18 years of age or older residing with a person who is 55 years of age or older, provided that said adult is essential to the long-term care of the elderly person as certified by a physician duly licensed in New York State.

[1] Notwithstanding the foregoing, up to four (4) dwelling units within the community may be set aside to be occupied by a superintendent, building manager, or other staff member and their family, to which the limitations on occupancy set forth above shall not apply.

[2] Persons under the age of 55 not specifically permitted to be occupants shall not be permitted to be permanent residents of dwelling units. For the purposes of this section, a “permanent resident” shall mean any person who resides within the dwelling for more than three consecutive weeks or in excess of 30 days in any calendar year, or has listed the residence as an abode for any purpose whatsoever, including, but not limited to, enrollment in public or private schools. Temporary occupancy by guests of families shall be

permitted, provided that such occupancy does not exceed a total of 30 days in any calendar year.

[3] The limitations on occupancy shall be included in the marketing materials for the development as well as within the rules and regulations or terms of any leases, bylaws or covenants and restrictions for the development. Violations of the limitations on occupancy shall be enforceable by the City of Rye Building Inspector against the owner or lessee or the agent of any of them and shall be punishable by a fine of \$250 per day or by imprisonment not exceeding 15 days, or by both such fine and imprisonment. Exceptions to these regulations shall be granted if any limitations are determined to be in violation of any state or federal law.

[4] The Planning Commission shall have the right to require that the owner execute agreements and covenants as it may deem to be required during any site plan approval process as it may reasonably deem to be required to ensure compliance with the stated intent of this section. Said agreements or covenants shall be recorded in the office of the Westchester County Clerk and constitute a covenant running with the land. Such covenant or agreement may be modified or released only as set forth in said covenant or agreement or by the City Council.

- (b) The site for an R-2 Senior Living Facility shall have a minimum of 50 contiguous acres.
- (c) The floor area ratio shall not exceed 0.45.
- (d) Lot building coverage shall not exceed 15% and total impervious coverage shall not exceed 35%.
- (e) Building height shall not exceed four (4) stories or 60 feet. Where proposed buildings are set back at least 240 feet from the all property lines and wholly located within an area of said setback that can contain a horizontal square with 200-foot sides, the permitted maximum building height may be increased to five (5) stories and 75 feet.
- (f) There shall be a minimum yard requirement of 160 feet for front yards and a minimum yard requirement of 160 feet for side and rear yards.

[1] Where an R-2 Senior Living Facility adjoins or is located across the street from a single-family residence or school, the required yard shall be planted and maintained with appropriate landscaping so as to provide effective visual screening, and shall contain no parking, storage, or other program use. Nothing herein shall prohibit the placement of stormwater management facilities, sidewalks, and/or access drives within the required setback.

[2] Where an R-2 Senior Living Facility is located across a non-State, non-County, or non-federally-designated road from a one-family district, the minimum required setback from that road shall be 240 feet.

[3] Where an R-2 Senior Living facility adjoins or is located across the street from a use other than a single-family residence or school, required yard

setbacks may be reduced to no less than 100 feet, provided that the maximum permitted area of the encroachment of the structure into this reduced setback shall be no more than 30% of the total area between each yard line and the standard 160-foot setback. Notwithstanding the foregoing, for all new buildings and structures, a minimum setback of 160 feet shall be maintained from Old Boston Post Road.

[4] The provisions of § 197-52 shall not apply to R-2 Senior Living Facilities.

- (g) New parking areas and roadways may be located in required yards, but in no case shall a parking area or roadway be located closer than 40 feet to a property line.
- (h) There shall be a minimum distance of 20 feet between all buildings. Notwithstanding the foregoing, buildings may be connected by exterior paved pathways or interior corridors. The provisions of § 197-70 shall not apply to R-2 Senior Living Facilities.
- (i) For independent living units in R-2 Senior Living Facilities, the minimum amount of residential floor area in each unit shall be 750 square feet for one bedroom units, 900 square feet for two bedroom units, and 1,100 square feet for three bedroom units. For assisted living units, the minimal amount of residential floor area shall be 200 square feet. The provisions of § 197-44.B shall not apply to R-2 Senior Living Facilities.
- (j) On any lot used for an R-2 Senior Living Facility, at least 60% of the property shall be preserved as open space. The provisions of § 197-68 shall not apply to R-2 Senior Living Facilities.
- (k) Off-street parking for R-2 Senior Living Facilities shall be provided as follows:
  - [1] For independent living units: 1.5 spaces per dwelling unit.
  - [2] For assisted living, skilled nursing, nursing home, and memory care facilities: 0.25 spaces per bed.
- (l) The provisions of Chapter 197, Attachment 1, entitled “Table A: Residence Districts” shall not apply to R-2 Senior Living Facilities.
- (m) The provisions of § 197-8.A and C shall not apply to R-2 Senior Living Facilities.
- (n) Notwithstanding any of the foregoing, any building, structure or use existing on the effective date of this section which does not conform to the provisions of this section may be continued subject to the requirements of Article III of this chapter.

**Section Two.** If any section, subsection, clause, phrase or other portion of this Local Law is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body or other authority of competent jurisdiction, such portion shall be deemed a separate distinct and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

**Section Three.** This Local Law shall take effect immediately upon filing with the Secretary of State.

**CITY COUNCIL  
CITY OF RYE, NEW YORK**

**LOCAL LAW NO. \_\_\_-201920**

**A LOCAL LAW TO REVISE THE ZONING ORDINANCE  
OF THE CITY OF RYE**

**Be it enacted by the City Council of the City of Rye as follows:**

**Section One.** Section 197-86 of the City of Rye Zoning Ordinance shall be amended by adding a new section (15) entitled “R-2 Senior Living Facilities” to Table A, Column 2, under the heading “R-1, R-2, R-3, R-4, R-5, R-6, RS and RT Districts”, which shall state as follows:

(15) R-2 Senior Living Facilities. In the R-2 District, an age restricted, multi-family residential facility in a campus setting providing a variety of housing types, including, but not limited to: independent living units, assisted living facilities, ambulatory services, and domiciliary care facilities, with healthcare support, including but not limited to availability of accessible units and assistance for residents with activities of daily living, and including other appropriate ancillary and accessory uses typically found in senior residential communities including, but not limited to, communal space, associated office space, equipment storage, residences for staff, support facilities, food preparation and service facilities, provided that:

- (a) Residents of R-2 Senior Living Facilities shall be limited to: (i) a single person 55 years of age or older; (ii) two or three persons, all of whom are 55 years of age or older; (iii) a married couple, live-in companion, or partner, one of which is 55 years of age or older; (iv) the surviving spouse of a person 55 years of age or older, provided that the surviving spouse was duly registered as a resident of the development at the time of the elderly person's death; and (v) one adult 18 years of age or older residing with a person who is 55 years of age or older, provided that said adult is essential to the long-term care of the elderly person as certified by a physician duly licensed in New York State.

[1] Notwithstanding the foregoing, up to four (4) dwelling units within the community may be set aside to be occupied by a superintendent, building manager, or other staff member and their family, to which the limitations on occupancy set forth above shall not apply.

[2] Persons under the age of 55 not specifically permitted to be occupants shall not be permitted to be permanent residents of dwelling units. For the purposes of this section, a “permanent resident” shall mean any person who resides within the dwelling for more than three consecutive weeks or in excess of 30 days in any calendar year, or has listed the residence as an abode for any purpose whatsoever, including, but not limited to, enrollment in public or private schools. Temporary occupancy by guests of families shall be

permitted, provided that such occupancy does not exceed a total of 30 days in any calendar year.

[3] The limitations on occupancy shall be included in the marketing materials for the development as well as within the rules and regulations or terms of any leases, bylaws or covenants and restrictions for the development. Violations of the limitations on occupancy shall be enforceable by the City of Rye Building Inspector against the owner or lessee or the agent of any of them and shall be punishable by a fine of \$250 per day or by imprisonment not exceeding 15 days, or by both such fine and imprisonment. Exceptions to these regulations shall be granted if any limitations are determined to be in violation of any state or federal law.

[4] The Planning Commission shall have the right to require that the owner execute agreements and covenants as it may deem to be required during any site plan approval process as it may reasonably deem to be required to ensure compliance with the stated intent of this section. Said agreements or covenants shall be recorded in the office of the Westchester County Clerk and constitute a covenant running with the land. Such covenant or agreement may be modified or released only as set forth in said covenant or agreement or by the City Council.

(b) The site for an R-2 Senior Living Facility shall have a minimum of 50 contiguous acres.

(c) The floor area ratio shall not exceed ~~0.50~~0.45.

(d) Lot building coverage shall not exceed ~~20~~15% and total impervious coverage shall not exceed 35%.

(e) Building height shall not exceed ~~five (5)~~ four (4) stories or 60 feet. Where proposed buildings are set back at least 240 feet from the all property lines and wholly located within an area of said setback that can contain a horizontal square with 200-foot sides, the permitted maximum building height may be increased to five (5) stories and 75 feet.

(f) There shall be a minimum yard requirement of ~~150~~160 feet for front yards and a minimum yard requirement of ~~50~~160 feet for side and rear yards.

[1] Where an R-2 Senior Living Facility adjoins or is located across the street from a single-family residence or school, the required yard shall be planted and maintained with appropriate landscaping so as to provide effective visual screening, and shall contain no parking, storage, or other program use. Nothing herein shall prohibit the placement of stormwater management facilities, sidewalks, and/or access drives within the required setback.

[2] Where an R-2 Senior Living Facility is located across a non-State, non-County, or non-federally-designated road from a one-family district, the minimum required setback from that road shall be 240 feet.

~~[1]~~[3] Where an R-2 Senior Living facility adjoins or is located across the street from a use other than a single-family residence or school, Rrequired ~~front~~ yard setbacks may be reduced to no less than ~~60-100~~ feet, provided that the maximum permitted area of the encroachment of the structure into this reduced setback shall be no more than ~~25~~30% of the total area between ~~the~~ ~~front~~each yard line and the standard ~~150~~160-foot setback. Notwithstanding the foregoing, for all new buildings and structures, a minimum setback of ~~150~~160 feet shall be maintained from Old Boston Post Road.

~~[2]~~[4] The provisions of § 197-52 shall not apply to R-2 Senior Living Facilities.

- (g) New parking areas and roadways may be located in required yards, but in no case shall a parking area or roadway be located closer than 40 feet to a property line.
- (h) There shall be a minimum distance of 20 feet between all buildings. Notwithstanding the foregoing, buildings may be connected by exterior paved pathways or interior corridors. The provisions of § 197-70 shall not apply to R-2 Senior Living Facilities.
- (i) For independent living units in R-2 Senior Living Facilities, the minimum amount of residential floor area in each unit shall be 750 square feet for one bedroom units, 900 square feet for two bedroom units, and 1,100 square feet for three bedroom units. For assisted living units, the minimal amount of residential floor area shall be 200 square feet. The provisions of § 197-44.B shall not apply to R-2 Senior Living Facilities.
- (j) On any lot used for an R-2 Senior Living Facility, at least 60% of the property shall be preserved as open space. The provisions of § 197-68 shall not apply to R-2 Senior Living Facilities.
- (k) Off-street parking for R-2 Senior Living Facilities shall be provided as follows:
  - [1] For independent living units: 1.5 spaces per dwelling unit.
  - [2] For assisted living, skilled nursing, nursing home, and memory care facilities: 0.25 spaces per bed.
- (l) The provisions of Chapter 197, Attachment 1, entitled “Table A: Residence Districts” shall not apply to R-2 Senior Living Facilities.

(m) The provisions of § 197-8.A and C shall not apply to R-2 Senior Living Facilities.

~~(m)~~(n) Notwithstanding any of the foregoing, any building, structure or use existing on the effective date of this section which does not conform to the provisions of this section may be continued subject to the requirements of Article III of this chapter.

**Section Two.** If any section, subsection, clause, phrase or other portion of this Local Law is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body or other authority of competent jurisdiction, such portion shall be deemed a separate distinct and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

**Section Three.** This Local Law shall take effect immediately upon filing with the Secretary of State.

# THE OSBORN

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## III. ENVIRONMENTAL ASSESSMENT FORM

**Full Environmental Assessment Form**  
**Part 1 - Project and Setting**

**Instructions for Completing Part 1**

**Part 1 is to be completed by the applicant or project sponsor.** Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification.

Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information; indicate whether missing information does not exist, or is not reasonably available to the sponsor; and, when possible, generally describe work or studies which would be necessary to update or fully develop that information.

Applicants/sponsors must complete all items in Sections A & B. In Sections C, D & E, most items contain an initial question that must be answered either “Yes” or “No”. If the answer to the initial question is “Yes”, complete the sub-questions that follow. If the answer to the initial question is “No”, proceed to the next question. Section F allows the project sponsor to identify and attach any additional information. Section G requires the name and signature of the applicant or project sponsor to verify that the information contained in Part 1 is accurate and complete.

**A. Project and Applicant/Sponsor Information.**

Name of Action or Project: The Osborn Zoning Text Amendment Petition - R2 Senior Living Facility		
Project Location (describe, and attach a general location map): 101 Theall Road, City of Rye, Westchester County, NY 10580 - Section 146.13-1-8		
Brief Description of Proposed Action (include purpose or need): A Local Law to revise the Zoning Ordinance of the City of Rye is being proposed to allow for flexible design of senior living on the property. The amendment will include Senior Living Facilities as a use permitted subject to additional standards and requirements in a R-2 Zone. It will also include permitted accessory uses to R-2 Senior Living Facilities.		
Name of Applicant/Sponsor: Miriam Osborn Memorial Home Association		Telephone: (914) 925-8201 E-Mail: manderson@theosborn.org
Address: 101 Theall Road		
City/PO: Rye	State: New York	Zip Code: 10580
Project Contact (if not same as sponsor; give name and title/role): Frank S. McCullough, Jr		Telephone: (914) 949-6400 E-Mail: fmccullough@mgslawyers.com
Address: 1311 Mamaroneck Avenue, Suite 340		
City/PO: White Plains	State: New York	Zip Code: 10605
Property Owner (if not same as sponsor):		Telephone: E-Mail:
Address:		
City/PO:	State:	Zip Code:

**B. Government Approvals**

<b>B. Government Approvals, Funding, or Sponsorship.</b> (“Funding” includes grants, loans, tax relief, and any other forms of financial assistance.)		
<b>Government Entity</b>	<b>If Yes: Identify Agency and Approval(s) Required</b>	<b>Application Date (Actual or projected)</b>
a. City Council, <del>Town Board</del> , <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <del>or Village Board of Trustees</del>	Rye City Council -Zoning Text Amendment Revision of C&Rs	
b. City, <del>Town or Village</del> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <del>Planning Board</del> or Commission	City of Rye Planning Commission - Zoning Amendment Referral	Referral
c. City, Town or Village Zoning Board of Appeals <input type="checkbox"/> Yes <input type="checkbox"/> No		
d. Other local agencies <input type="checkbox"/> Yes <input type="checkbox"/> No		
e. County agencies <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Westchester County Department of Planning 239-m	
f. Regional agencies <input type="checkbox"/> Yes <input type="checkbox"/> No		
g. State agencies <input type="checkbox"/> Yes <input type="checkbox"/> No		
h. Federal agencies <input type="checkbox"/> Yes <input type="checkbox"/> No		
i. Coastal Resources.		
i. Is the project site within a Coastal Area, or the waterfront area of a Designated Inland Waterway?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
ii. Is the project site located in a community with an approved Local Waterfront Revitalization Program?		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
iii. Is the project site within a Coastal Erosion Hazard Area?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

**C. Planning and Zoning**

<b>C.1. Planning and zoning actions.</b>	
Will administrative or legislative adoption, or amendment of a plan, local law, ordinance, rule or regulation be the only approval(s) which must be granted to enable the proposed action to proceed?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No **
<ul style="list-style-type: none"> <li>• <b>If Yes</b>, complete sections C, F and G.</li> <li>• <b>If No</b>, proceed to question C.2 and complete all remaining sections and questions in Part 1</li> </ul>	
<b>C.2. Adopted land use plans.</b>	
a. Do any municipally- adopted (city, town, village or county) comprehensive land use plan(s) include the site where the proposed action would be located?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
If Yes, does the comprehensive plan include specific recommendations for the site where the proposed action would be located?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
b. Is the site of the proposed action within any local or regional special planning district (for example: Greenway; Brownfield Opportunity Area (BOA); designated State or Federal heritage area; watershed management plan; or other?)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If Yes, identify the plan(s):	
_____	
_____	
_____	
c. Is the proposed action located wholly or partially within an area listed in an adopted municipal open space plan, or an adopted municipal farmland protection plan?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If Yes, identify the plan(s):	
_____	
_____	
_____	

**\*\* This application is only for the adoption of a zoning text amendment. Nevertheless, we wish to more fully address all potential impacts.**

**C.3. Zoning**

a. Is the site of the proposed action located in a municipality with an adopted zoning law or ordinance.  Yes  No  
If Yes, what is the zoning classification(s) including any applicable overlay district?  
R-2 One-Family Districts — Minimum lot size 1/2 acre

b. Is the use permitted or allowed by a special or conditional use permit?  Yes  No

c. Is a zoning change requested as part of the proposed action?  Yes  No  
If Yes,  
i. What is the proposed new zoning for the site? R-2 Senior Living Facilities

**C.4. Existing community services.**

a. In what school district is the project site located? Rye City School District

b. What police or other public protection forces serve the project site?  
Rye City Police Department

c. Which fire protection and emergency medical services serve the project site?  
Rye City Fire Department; Port Chester-Rye-Rye Brook EMS

d. What parks serve the project site?  
Project Site is approximately 1/4 mile from Rye Nature Center.

**D. Project Details**

**D.1. Proposed and Potential Development**

a. What is the general nature of the proposed action (e.g., residential, industrial, commercial, recreational; if mixed, include all components)? Zoning Text Amendment

b. a. Total acreage of the site of the proposed action? 55.8 acres  
b. Total acreage to be physically disturbed? \_\_\_\_\_ acres  
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? 55.8 acres

c. Is the proposed action an expansion of an existing project or use?  Yes  No  
i. If Yes, what is the approximate percentage of the proposed expansion and identify the units (e.g., acres, miles, housing units, square feet)? % TBD Units: TBD

d. Is the proposed action a subdivision, or does it include a subdivision?  Yes  No  
If Yes,  
i. Purpose or type of subdivision? (e.g., residential, industrial, commercial; if mixed, specify types)

ii. Is a cluster/conservation layout proposed?  Yes  No

iii. Number of lots proposed? \_\_\_\_\_  
iv. Minimum and maximum proposed lot sizes? Minimum \_\_\_\_\_ Maximum \_\_\_\_\_

e. Will the proposed action be constructed in multiple phases?  Yes  No  
i. If No, anticipated period of construction: TBD months  
ii. If Yes:  
• Total number of phases anticipated \_\_\_\_\_  
• Anticipated commencement date of phase 1 (including demolition) \_\_\_\_\_ month \_\_\_\_\_ year  
• Anticipated completion date of final phase \_\_\_\_\_ month \_\_\_\_\_ year  
• Generally describe connections or relationships among phases, including any contingencies where progress of one phase may determine timing or duration of future phases: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

f. Does the project include new residential uses?  Yes  No  
 If Yes, show numbers of units proposed.

	<u>One Family</u>	<u>Two Family</u>	<u>Three Family</u>	<u>Multiple Family (four or more)</u>
Initial Phase	--	--	--	TBD
At completion	_____	_____	_____	_____
of all phases	_____	_____	_____	_____

g. Does the proposed action include new non-residential construction (including expansions)?  Yes  No  
 If Yes,

i. Total number of structures TBD

ii. Dimensions (in feet) of largest proposed structure: \_\_\_\_\_ height; \_\_\_\_\_ width; and \_\_\_\_\_ length

iii. Approximate extent of building space to be heated or cooled: \_\_\_\_\_ square feet

h. Does the proposed action include construction or other activities that will result in the impoundment of any liquids, such as creation of a water supply, reservoir, pond, lake, waste lagoon or other storage?  Yes  No  
 If Yes,

i. Purpose of the impoundment: Stormwater Treatment

ii. If a water impoundment, the principal source of the water:  Ground water  Surface water streams  Other specify: \_\_\_\_\_

Rainfall

iii. If other than water, identify the type of impounded/contained liquids and their source. \_\_\_\_\_

iv. Approximate size of the proposed impoundment. Volume: \_\_\_\_\_ TBD million gallons; surface area: \_\_\_\_\_ acres

v. Dimensions of the proposed dam or impounding structure: \_\_\_\_\_ TBD height; \_\_\_\_\_ length

vi. Construction method/materials for the proposed dam or impounding structure (e.g., earth fill, rock, wood, concrete): \_\_\_\_\_

**D.2. Project Operations**

a. Does the proposed action include any excavation, mining, or dredging, during construction, operations, or both?  Yes  No  
 (Not including general site preparation, grading or installation of utilities or foundations where all excavated materials will remain onsite)  
 If Yes:

i. What is the purpose of the excavation or dredging? \_\_\_\_\_

ii. How much material (including rock, earth, sediments, etc.) is proposed to be removed from the site?

- Volume (specify tons or cubic yards): \_\_\_\_\_
- Over what duration of time? \_\_\_\_\_

iii. Describe nature and characteristics of materials to be excavated or dredged, and plans to use, manage or dispose of them. \_\_\_\_\_

iv. Will there be onsite dewatering or processing of excavated materials?  Yes  No  
 If yes, describe. \_\_\_\_\_

v. What is the total area to be dredged or excavated? \_\_\_\_\_ acres

vi. What is the maximum area to be worked at any one time? \_\_\_\_\_ acres

vii. What would be the maximum depth of excavation or dredging? \_\_\_\_\_ feet

viii. Will the excavation require blasting?  Yes  No

ix. Summarize site reclamation goals and plan: \_\_\_\_\_

b. Would the proposed action cause or result in alteration of, increase or decrease in size of, or encroachment into any existing wetland, waterbody, shoreline, beach or adjacent area?  Yes  No  
 If Yes:

i. Identify the wetland or waterbody which would be affected (by name, water index number, wetland map number or geographic description): \_\_\_\_\_

ii. Describe how the proposed action would affect that waterbody or wetland, e.g. excavation, fill, placement of structures, or alteration of channels, banks and shorelines. Indicate extent of activities, alterations and additions in square feet or acres:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

iii. Will the proposed action cause or result in disturbance to bottom sediments?  Yes  No

If Yes, describe: \_\_\_\_\_

iv. Will the proposed action cause or result in the destruction or removal of aquatic vegetation?  Yes  No

If Yes:

- acres of aquatic vegetation proposed to be removed: \_\_\_\_\_
- expected acreage of aquatic vegetation remaining after project completion: \_\_\_\_\_
- purpose of proposed removal (e.g. beach clearing, invasive species control, boat access): \_\_\_\_\_
- proposed method of plant removal: \_\_\_\_\_
- if chemical/herbicide treatment will be used, specify product(s): \_\_\_\_\_

v. Describe any proposed reclamation/mitigation following disturbance: \_\_\_\_\_

c. Will the proposed action use, or create a new demand for water?  Yes  No

If Yes:

i. Total anticipated water usage/demand per day: \_\_\_\_\_ \* Up to 16,830 gallons/day

ii. Will the proposed action obtain water from an existing public water supply?  Yes  No

If Yes:

- Name of district or service area: Suez Water - Westchester County
- Does the existing public water supply have capacity to serve the proposal?  Yes  No
- Is the project site in the existing district?  Yes  No
- Is expansion of the district needed?  Yes  No
- Do existing lines serve the project site?  Yes  No

iii. Will line extension within an existing district be necessary to supply the project?  Yes  No

If Yes:

- Describe extensions or capacity expansions proposed to serve this project: \_\_\_\_\_
- Source(s) of supply for the district: \_\_\_\_\_

iv. Is a new water supply district or service area proposed to be formed to serve the project site?  Yes  No

If Yes:

- Applicant/sponsor for new district: \_\_\_\_\_
- Date application submitted or anticipated: \_\_\_\_\_
- Proposed source(s) of supply for new district: \_\_\_\_\_

v. If a public water supply will not be used, describe plans to provide water supply for the project: \_\_\_\_\_

vi. If water supply will be from wells (public or private), what is the maximum pumping capacity: \_\_\_\_\_ gallons/minute.

d. Will the proposed action generate liquid wastes?  Yes  No

If Yes:

i. Total anticipated liquid waste generation per day: \_\_\_\_\_ \* up to 15,300 gallons/day

ii. Nature of liquid wastes to be generated (e.g., sanitary wastewater, industrial; if combination, describe all components and approximate volumes or proportions of each): \_\_\_\_\_

iii. Will the proposed action use any existing public wastewater treatment facilities?  Yes  No

If Yes:

- Name of wastewater treatment plant to be used: Mamaroneck Wastewater Treatment Plant; Blind Brook WWTP
- Name of district: Mamaroneck; Blindbrook
- Does the existing wastewater treatment plant have capacity to serve the project?  Yes  No
- Is the project site in the existing district?  Yes  No
- Is expansion of the district needed?  Yes  No

\*Unit flow values based on NYSDEC Design Standards for Wastewater Treatment Works, § B.6.b, Design Flow, March 2014.

Yes  No  
 Yes  No  
 If Yes:
 

- Describe extensions or capacity expansions proposed to serve this project: \_\_\_\_\_

iv. Will a new wastewater (sewage) treatment district be formed to serve the project site?  Yes  No  
 If Yes:
 

- Applicant/sponsor for new district: \_\_\_\_\_
- Date application submitted or anticipated: \_\_\_\_\_
- What is the receiving water for the wastewater discharge? \_\_\_\_\_

v. If public facilities will not be used, describe plans to provide wastewater treatment for the project, including specifying proposed receiving water (name and classification if surface discharge or describe subsurface disposal plans):  
 \_\_\_\_\_  
 \_\_\_\_\_

vi. Describe any plans or designs to capture, recycle or reuse liquid waste: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

e. Will the proposed action disturb more than one acre and create stormwater runoff, either from new point sources (i.e. ditches, pipes, swales, curbs, gutters or other concentrated flows of stormwater) or non-point source (i.e. sheet flow) during construction or post construction?  Yes  No  
 If Yes:
 

- i. How much impervious surface will the project create in relation to total size of project parcel?  
 \_\_\_ TBD \_\_\_ Square feet or \_\_\_ TBD \_\_\_ acres (impervious surface)  
 2,434,133 Square feet or 55.8 acres (parcel size)
- ii. Describe types of new point sources. TBD \_\_\_\_\_
- iii. Where will the stormwater runoff be directed (i.e. on-site stormwater management facility/structures, adjacent properties, groundwater, on-site surface water or off-site surface waters)?  
 On-site stormwater management facility  
 \_\_\_\_\_  
  - If to surface waters, identify receiving water bodies or wetlands: \_\_\_\_\_
  - Will stormwater runoff flow to adjacent properties?  Yes  No

iv. Does the proposed plan minimize impervious surfaces, use pervious materials or collect and re-use stormwater?  Yes  No

f. Does the proposed action include, or will it use on-site, one or more sources of air emissions, including fuel combustion, waste incineration, or other processes or operations?  Yes  No  
 If Yes, identify:
 

- i. Mobile sources during project operations (e.g., heavy equipment, fleet or delivery vehicles)  
 Construction Equipment \_\_\_\_\_
- ii. Stationary sources during construction (e.g., power generation, structural heating, batch plant, crushers) \_\_\_\_\_
- iii. Stationary sources during operations (e.g., process emissions, large boilers, electric generation) \_\_\_\_\_

g. Will any air emission sources named in D.2.f (above), require a NY State Air Registration, Air Facility Permit, or Federal Clean Air Act Title IV or Title V Permit?  Yes  No  
 If Yes:
 

- i. Is the project site located in an Air quality non-attainment area? (Area routinely or periodically fails to meet ambient air quality standards for all or some parts of the year)  Yes  No
- ii. In addition to emissions as calculated in the application, the project will generate:
  - \_\_\_\_\_ Tons/year (short tons) of Carbon Dioxide (CO<sub>2</sub>)
  - \_\_\_\_\_ Tons/year (short tons) of Nitrous Oxide (N<sub>2</sub>O)
  - \_\_\_\_\_ Tons/year (short tons) of Perfluorocarbons (PFCs)
  - \_\_\_\_\_ Tons/year (short tons) of Sulfur Hexafluoride (SF<sub>6</sub>)
  - \_\_\_\_\_ Tons/year (short tons) of Carbon Dioxide equivalent of Hydroflouorocarbons (HFCs)
  - \_\_\_\_\_ Tons/year (short tons) of Hazardous Air Pollutants (HAPs)

h. Will the proposed action generate or emit methane (including, but not limited to, sewage treatment plants, landfills, composting facilities)?  Yes  No

If Yes:

i. Estimate methane generation in tons/year (metric): \_\_\_\_\_

ii. Describe any methane capture, control or elimination measures included in project design (e.g., combustion to generate heat or electricity, flaring): \_\_\_\_\_

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i. Will the proposed action result in the release of air pollutants from open-air operations or processes, such as quarry or landfill operations?  Yes  No

If Yes: Describe operations and nature of emissions (e.g., diesel exhaust, rock particulates/dust): \_\_\_\_\_

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j. Will the proposed action result in a substantial increase in traffic above present levels or generate substantial new demand for transportation facilities or services?  Yes  No

If Yes:

i. When is the peak traffic expected (Check all that apply):  Morning  Evening  Weekend  
 Randomly between hours of \_\_\_\_\_ to \_\_\_\_\_.

ii. For commercial activities only, projected number of truck trips/day and type (e.g., semi trailers and dump trucks): \_\_\_\_\_

iii. Parking spaces: Existing \_\_\_\_\_ Proposed \_\_\_\_\_ Net increase/decrease \_\_\_\_\_

iv. Does the proposed action include any shared use parking?  Yes  No

v. If the proposed action includes any modification of existing roads, creation of new roads or change in existing access, describe: \_\_\_\_\_

vi. Are public/private transportation service(s) or facilities available within 1/2 mile of the proposed site?  Yes  No

vii. Will the proposed action include access to public transportation or accommodations for use of hybrid, electric or other alternative fueled vehicles?  Yes  No

viii. Will the proposed action include plans for pedestrian or bicycle accommodations for connections to existing pedestrian or bicycle routes?  Yes  No

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k. Will the proposed action (for commercial or industrial projects only) generate new or additional demand for energy?  Yes  No  
N/A

If Yes:

i. Estimate annual electricity demand during operation of the proposed action: \_\_\_\_\_

ii. Anticipated sources/suppliers of electricity for the project (e.g., on-site combustion, on-site renewable, via grid/local utility, or other): \_\_\_\_\_

iii. Will the proposed action require a new, or an upgrade, to an existing substation?  Yes  No

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l. Hours of operation. Answer all items which apply.

i. During Construction: Per § 133-8E of City of Rye

- Monday - Friday: \_\_\_\_\_
- Saturday: \_\_\_\_\_
- Sunday: \_\_\_\_\_
- Holidays: \_\_\_\_\_

ii. During Operations:

- Monday - Friday: \_\_\_\_\_ 24hrs/ day
- Saturday: \_\_\_\_\_ 24hrs/ day-
- Sunday: \_\_\_\_\_ 24hrs/ day
- Holidays: \_\_\_\_\_ 24hrs/ day

<p>m. Will the proposed action produce noise that will exceed existing ambient noise levels during construction, operation, or both? <span style="float: right;"><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</span></p> <p>If yes:</p> <p>i. Provide details including sources, time of day and duration:</p> <p>During construction; TBD _____</p>
<p>ii. Will the proposed action remove existing natural barriers that could act as a noise barrier or screen? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>Describe: _____</p>
<p>n. Will the proposed action have outdoor lighting? <span style="float: right;"><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</span></p> <p>If yes:</p> <p>i. Describe source(s), location(s), height of fixture(s), direction/aim, and proximity to nearest occupied structures:</p> <p>TBD _____</p>
<p>ii. Will proposed action remove existing natural barriers that could act as a light barrier or screen? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>Describe: _____</p>
<p>o. Does the proposed action have the potential to produce odors for more than one hour per day? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If Yes, describe possible sources, potential frequency and duration of odor emissions, and proximity to nearest occupied structures: _____</p> <p>_____</p> <p>_____</p>
<p>p. Will the proposed action include any bulk storage of petroleum (combined capacity of over 1,100 gallons) or chemical products 185 gallons in above ground storage or any amount in underground storage? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No TBD</span></p> <p>If Yes:</p> <p>i. Product(s) to be stored _____</p> <p>ii. Volume(s) _____ per unit time _____ (e.g., month, year)</p> <p>iii. Generally, describe the proposed storage facilities: _____</p> <p>_____</p>
<p>q. Will the proposed action (commercial, industrial and recreational projects only) use pesticides (i.e., herbicides, insecticides) during construction or operation? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></p> <p>If Yes:</p> <p>i. Describe proposed treatment(s):</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>ii. Will the proposed action use Integrated Pest Management Practices? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></p>
<p>r. Will the proposed action (commercial or industrial projects only) involve or require the management or disposal of solid waste (excluding hazardous materials)? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></p> <p>If Yes:</p> <p>i. Describe any solid waste(s) to be generated during construction or operation of the facility:</p> <ul style="list-style-type: none"> <li>• Construction: _____ tons per _____ (unit of time)</li> <li>• Operation : _____ tons per _____ (unit of time)</li> </ul> <p>ii. Describe any proposals for on-site minimization, recycling or reuse of materials to avoid disposal as solid waste:</p> <ul style="list-style-type: none"> <li>• Construction: _____</li> <li>• Operation: _____</li> </ul> <p>iii. Proposed disposal methods/facilities for solid waste generated on-site:</p> <ul style="list-style-type: none"> <li>• Construction: _____</li> <li>• Operation: _____</li> </ul> <p>_____</p> <p>_____</p>

s. Does the proposed action include construction or modification of a solid waste management facility?  Yes  No  
 If Yes:  
 i. Type of management or handling of waste proposed for the site (e.g., recycling or transfer station, composting, landfill, or other disposal activities): \_\_\_\_\_  
 ii. Anticipated rate of disposal/processing:  
 • \_\_\_\_\_ Tons/month, if transfer or other non-combustion/thermal treatment, or  
 • \_\_\_\_\_ Tons/hour, if combustion or thermal treatment  
 iii. If landfill, anticipated site life: \_\_\_\_\_ years

t. Will the proposed action at the site involve the commercial generation, treatment, storage, or disposal of hazardous waste?  Yes  No  
 If Yes:  
 i. Name(s) of all hazardous wastes or constituents to be generated, handled or managed at facility: \_\_\_\_\_  
 \_\_\_\_\_  
 ii. Generally describe processes or activities involving hazardous wastes or constituents: \_\_\_\_\_  
 \_\_\_\_\_  
 iii. Specify amount to be handled or generated \_\_\_\_\_ tons/month  
 iv. Describe any proposals for on-site minimization, recycling or reuse of hazardous constituents: \_\_\_\_\_  
 \_\_\_\_\_  
 v. Will any hazardous wastes be disposed at an existing offsite hazardous waste facility?  Yes  No  
 If Yes: provide name and location of facility: \_\_\_\_\_  
 \_\_\_\_\_  
 If No: describe proposed management of any hazardous wastes which will not be sent to a hazardous waste facility:  
 \_\_\_\_\_  
 \_\_\_\_\_

**E. Site and Setting of Proposed Action**

**E.1. Land uses on and surrounding the project site**

a. Existing land uses.  
 i. Check all uses that occur on, adjoining and near the project site.  
 Urban  Industrial  Commercial  Residential (suburban)  Rural (non-farm)  
 Forest  Agriculture  Aquatic  Other (specify): Retirement Community and Rehabilitation Facility  
 ii. If mix of uses, generally describe:  
 \_\_\_\_\_  
 \_\_\_\_\_

b. Land uses and covertypes on the project site.

Land use or Covertype	Current Acreage	Acreage After Project Completion	Change (Acres +/-)
• Roads, buildings, and other paved or impervious surfaces	14.8		
• Forested	0		
• Meadows, grasslands or brushlands (non-agricultural, including abandoned agricultural)			
• Agricultural (includes active orchards, field, greenhouse etc.)	0		
• Surface water features (lakes, ponds, streams, rivers, etc.)	0		
• Wetlands (freshwater or tidal)	0		
• Non-vegetated (bare rock, earth or fill)	0		
• Other Describe: <u>Landscaped Grounds</u>	41.0		

c. Is the project site presently used by members of the community for public recreation?  Yes  No  
i. If Yes: explain: \_\_\_\_\_

d. Are there any facilities serving children, the elderly, people with disabilities (e.g., schools, hospitals, licensed day care centers, or group homes) within 1500 feet of the project site?  Yes  No  
If Yes,  
i. Identify Facilities:  
The Osborn School is located on an adjoining parcel southeast of the project site  
\_\_\_\_\_

e. Does the project site contain an existing dam?  Yes  No  
If Yes:  
i. Dimensions of the dam and impoundment:  
• Dam height: \_\_\_\_\_ feet  
• Dam length: \_\_\_\_\_ feet  
• Surface area: \_\_\_\_\_ acres  
• Volume impounded: \_\_\_\_\_ gallons OR acre-feet  
ii. Dam's existing hazard classification: \_\_\_\_\_  
iii. Provide date and summarize results of last inspection:  
\_\_\_\_\_

f. Has the project site ever been used as a municipal, commercial or industrial solid waste management facility, or does the project site adjoin property which is now, or was at one time, used as a solid waste management facility?  Yes  No  
If Yes:  
i. Has the facility been formally closed?  Yes  No  
• If yes, cite sources/documentation: \_\_\_\_\_  
ii. Describe the location of the project site relative to the boundaries of the solid waste management facility:  
\_\_\_\_\_  
\_\_\_\_\_  
iii. Describe any development constraints due to the prior solid waste activities: \_\_\_\_\_

g. Have hazardous wastes been generated, treated and/or disposed of at the site, or does the project site adjoin property which is now or was at one time used to commercially treat, store and/or dispose of hazardous waste?  Yes  No  
If Yes:  
i. Describe waste(s) handled and waste management activities, including approximate time when activities occurred:  
\_\_\_\_\_  
\_\_\_\_\_

h. Potential contamination history. Has there been a reported spill at the proposed project site, or have any remedial actions been conducted at or adjacent to the proposed site?  Yes  No  
If Yes:  
i. Is any portion of the site listed on the NYSDEC Spills Incidents database or Environmental Site Remediation database? Check all that apply:  Yes  No  
 Yes – Spills Incidents database Provide DEC ID number(s): 1301473; 1303002  
 Yes – Environmental Site Remediation database Provide DEC ID number(s): \_\_\_\_\_  
 Neither database  
ii. If site has been subject of RCRA corrective activities, describe control measures: \_\_\_\_\_  
\_\_\_\_\_  
iii. Is the project within 2000 feet of any site in the NYSDEC Environmental Site Remediation database?  Yes  No  
If yes, provide DEC ID number(s): B00109  
iv. If yes to (i), (ii) or (iii) above, describe current status of site(s):  
The site listed in the NYSDEC Environmental Site Remediation Database is Beaver Swamp Brook site located in Harrison, NY, approximately 1,500 feet from the project site. Remediation at this site was completed on October 28, 2014.

v. Is the project site subject to an institutional control limiting property uses?  Yes  No

- If yes, DEC site ID number: \_\_\_\_\_
- Describe the type of institutional control (e.g., deed restriction or easement): \_\_\_\_\_
- Describe any use limitations: \_\_\_\_\_
- Describe any engineering controls: \_\_\_\_\_
- Will the project affect the institutional or engineering controls in place?  Yes  No
- Explain: \_\_\_\_\_  
\_\_\_\_\_

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**E.2. Natural Resources On or Near Project Site**

a. What is the average depth to bedrock on the project site? \_\_\_\_\_ 2-6 feet

b. Are there bedrock outcroppings on the project site?  Yes  No  
If Yes, what proportion of the site is comprised of bedrock outcroppings? \_\_\_\_\_ %

c. Predominant soil type(s) present on project site:

Crc	_____	26 %
PnB	_____	52 %
PnC	_____	22 %

d. What is the average depth to the water table on the project site? Average: \_\_\_\_\_ feet

e. Drainage status of project site soils:  Well Drained: \_\_\_\_\_ 26 % of site  
 Moderately Well Drained: \_\_\_\_\_ 74 % of site  
 Poorly Drained \_\_\_\_\_ % of site

f. Approximate proportion of proposed action site with slopes:  0-10%: \_\_\_\_\_ 65 % of site  
 10-15%: \_\_\_\_\_ 34.5 % of site  
 15% or greater: \_\_\_\_\_ 0.5 % of site

g. Are there any unique geologic features on the project site?  Yes  No  
If Yes, describe: \_\_\_\_\_  
\_\_\_\_\_

h. Surface water features.

i. Does any portion of the project site contain wetlands or other waterbodies (including streams, rivers, ponds or lakes)?  Yes  No

ii. Do any wetlands or other waterbodies adjoin the project site?  Yes  No  
If Yes to either *i* or *ii*, continue. If No, skip to E.2.i.

iii. Are any of the wetlands or waterbodies within or adjoining the project site regulated by any federal, state or local agency?  Yes  No

iv. For each identified regulated wetland and waterbody on the project site, provide the following information:

- Streams: Name \_\_\_\_\_ Classification \_\_\_\_\_
- Lakes or Ponds: Name \_\_\_\_\_ Classification \_\_\_\_\_
- Wetlands: Name \_\_\_\_\_ Approximate Size \_\_\_\_\_
- Wetland No. (if regulated by DEC) \_\_\_\_\_

v. Are any of the above water bodies listed in the most recent compilation of NYS water quality-impaired waterbodies?  Yes  No  
If yes, name of impaired water body/bodies and basis for listing as impaired: \_\_\_\_\_  
\_\_\_\_\_

i. Is the project site in a designated Floodway?  Yes  No

j. Is the project site in the 100-year Floodplain?  Yes  No

k. Is the project site in the 500-year Floodplain?  Yes  No

l. Is the project site located over, or immediately adjoining, a primary, principal or sole source aquifer?  Yes  No  
If Yes:  
i. Name of aquifer: Principal Aquifer \_\_\_\_\_

m. Identify the predominant wildlife species that occupy or use the project site: <u>Typical Suburban Species</u> _____ _____ _____	_____ _____ _____
n. Does the project site contain a designated significant natural community? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span> If Yes: <i>i.</i> Describe the habitat/community (composition, function, and basis for designation): _____ _____ <i>ii.</i> Source(s) of description or evaluation: _____ <i>iii.</i> Extent of community/habitat: <ul style="list-style-type: none"> <li>• Currently: _____ acres</li> <li>• Following completion of project as proposed: _____ acres</li> <li>• Gain or loss (indicate + or -): _____ acres</li> </ul>	
o. Does project site contain any species of plant or animal that is listed by the federal government or NYS as endangered or threatened, or does it contain any areas identified as habitat for an endangered or threatened species? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span> If Yes: <i>i.</i> Species and listing (endangered or threatened): _____ _____ _____	
p. Does the project site contain any species of plant or animal that is listed by NYS as rare, or as a species of special concern? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span> If Yes: <i>i.</i> Species and listing: _____ _____	
q. Is the project site or adjoining area currently used for hunting, trapping, fishing or shell fishing? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span> If yes, give a brief description of how the proposed action may affect that use: _____ _____	
<b>E.3. Designated Public Resources On or Near Project Site</b>	
a. Is the project site, or any portion of it, located in a designated agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span> If Yes, provide county plus district name/number: _____	
b. Are agricultural lands consisting of highly productive soils present? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span> <i>i.</i> If Yes: acreage(s) on project site? _____ <i>ii.</i> Source(s) of soil rating(s): _____	
c. Does the project site contain all or part of, or is it substantially contiguous to, a registered National Natural Landmark? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span> If Yes: <i>i.</i> Nature of the natural landmark: <input type="checkbox"/> Biological Community <input type="checkbox"/> Geological Feature <i>ii.</i> Provide brief description of landmark, including values behind designation and approximate size/extent: _____ _____ _____	
d. Is the project site located in or does it adjoin a state listed Critical Environmental Area? <span style="float: right;"><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</span> If Yes: <i>i.</i> CEA name: <u>County &amp; State Park Lands</u> <i>ii.</i> Basis for designation: <u>Exceptional or unique character</u> <i>iii.</i> Designating agency and date: <u>Agency: Westchester County, Date: 1-31-90</u>	

<p>c. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places?</p> <p>If Yes:</p> <p>i. Nature of historic/archaeological resource: <input type="checkbox"/> Archaeological Site    <input type="checkbox"/> Historic Building or District</p> <p>ii. Name: _____</p> <p>iii. Brief description of attributes on which listing is based: _____</p>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<p>f. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<p>g. Have additional archaeological or historic site(s) or resources been identified on the project site?</p> <p>If Yes:</p> <p>i. Describe possible resource(s): _____</p> <p>ii. Basis for identification: _____</p>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<p>h. Is the project site within five miles of any officially designated and publicly accessible federal, state, or local scenic or aesthetic resource?</p> <p>If Yes:</p> <p>i. Identify resource: _____</p> <p>ii. Nature of, or basis for, designation (e.g., established highway overlook, state or local park, state historic trail or scenic byway, etc.): _____</p> <p>iii. Distance between project and resource: _____ miles.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>i. Is the project site located within a designated river corridor under the Wild, Scenic and Recreational Rivers Program 6 NYCRR 666?</p> <p>If Yes:</p> <p>i. Identify the name of the river and its designation: _____</p> <p>ii. Is the activity consistent with development restrictions contained in 6 NYCRR Part 666?</p>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  <input type="checkbox"/> Yes <input type="checkbox"/> No

**F. Additional Information**

Attach any additional information which may be needed to clarify your project.

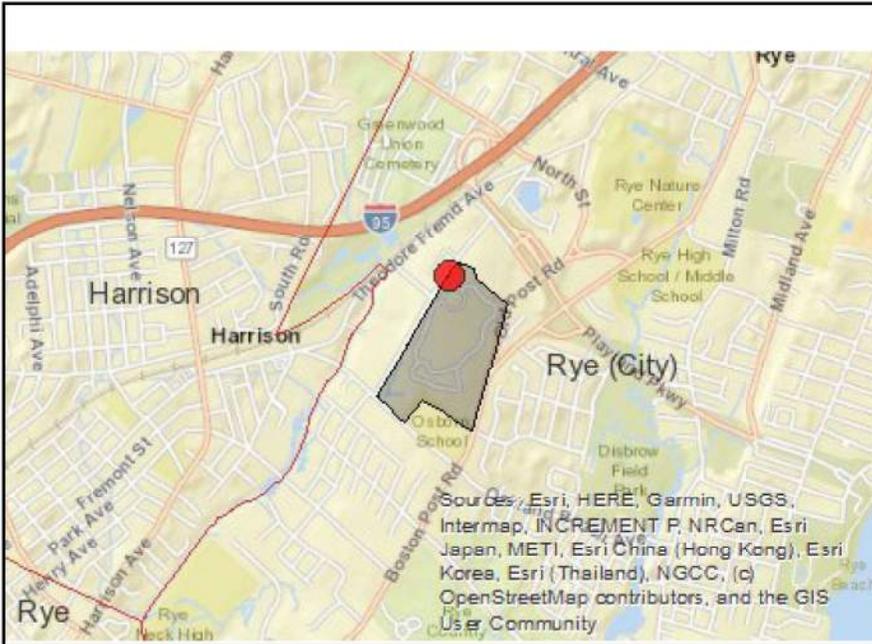
If you have identified any adverse impacts which could be associated with your proposal, please describe those impacts plus any measures which you propose to avoid or minimize them.

**G. Verification**

I certify that the information provided is true to the best of my knowledge.

Applicant/Sponsor Name Miriam Osborn Memorial Home Association      Date 3/11/2020

Signature       Title Partner, Divney Tung Schwalbe, LLP



**Disclaimer:** The EAF Mapper is a screening tool intended to assist project sponsors and reviewing agencies in preparing an environmental assessment form (EAF). Not all questions asked in the EAF are answered by the EAF Mapper. Additional information on any EAF question can be obtained by consulting the EAF Workbooks. Although the EAF Mapper provides the most up-to-date digital data available to DEC, you may also need to contact local or other data sources in order to obtain data not provided by the Mapper. Digital data is not a substitute for agency determinations.



B.i.i [Coastal or Waterfront Area]	No
B.i.ii [Local Waterfront Revitalization Area]	Yes
C.2.b. [Special Planning District]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h [DEC Spills or Remediation Site - Potential Contamination History]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.i [DEC Spills or Remediation Site - Listed]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.i [DEC Spills or Remediation Site - Environmental Site Remediation Database]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.iii [Within 2,000' of DEC Remediation Site]	Yes
E.1.h.iii [Within 2,000' of DEC Remediation Site - DEC ID]	B00109
E.2.g [Unique Geologic Features]	No
E.2.h.i [Surface Water Features]	No
E.2.h.ii [Surface Water Features]	No
E.2.h.iii [Surface Water Features]	No
E.2.h.v [Impaired Water Bodies]	No
E.2.i. [Floodway]	No
E.2.j. [100 Year Floodplain]	No
E.2.k. [500 Year Floodplain]	No
E.2.l. [Aquifers]	Yes
E.2.l. [Aquifer Names]	Principal Aquifer
E.2.n. [Natural Communities]	No

E.2.o. [Endangered or Threatened Species]	No
E.2.p. [Rare Plants or Animals]	No
E.3.a. [Agricultural District]	No
E.3.c. [National Natural Landmark]	No
E.3.d [Critical Environmental Area]	Yes
E.3.d [Critical Environmental Area - Name]	County & State Park Lands
E.3.d.ii [Critical Environmental Area - Reason]	Exceptional or unique character
E.3.d.iii [Critical Environmental Area – Date and Agency]	Agency:Westchester County, Date:1-31-90
E.3.e. [National or State Register of Historic Places or State Eligible Sites]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.3.f. [Archeological Sites]	Yes
E.3.i. [Designated River Corridor]	No

# THE OSBORN

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## IV. THE OSBORN IN RYE

## 1. THE OSBORN HISTORY

### *Origins and Founding*

Miriam Osborn's concerns for aged widowed women resulted from her worry for her acquaintances because of how easily fortunes could be lost in the financial markets where her husband worked. After her husband died, she consulted his attorney John Sterling and began planning her own legacy. She envisioned a home where women, raised like she, without self-sustaining work, could live out their lives.

John Sterling, a founding partner in the law firm of Shearman and Sterling, with well-known clients including Jay Gould, James Fisk, the National City Bank, and Standard Oil, supported Miriam Osborn's idea and became an active participant in advancing her vision. After her death, he dedicated himself to the actualization of her plan, from selection of the site, land acquisition, and selection of master craftsmen and materials to supervising the operation.

The first building was completed on the Osborn campus in 1908 as a home for aged gentlewomen in needy circumstances – the culmination of Miriam Osborn's dream.

### *Development of The Osborn Home*

Since 1908 other buildings have been added to the campus and many women and men have come to live in them, surrounded by lush and tranquil grounds and cared for by a staff dedicated to Miriam Osborn's vision.

In 1934 the Sterling Building, named after John Sterling and anchored by the ten (10) story tower, was opened to Osborn residents. The building is operational today and houses a variety of uses including the Sterling Theater and Lounge which can accommodate up to 500 people.

Residents at what had become known as "The Osborn Home" paid a non-refundable admission of \$500 (later increased to \$1,000) and assigned all their worldly possession to the home in exchange for care and shelter for the remainder of their lives. The last "assignment" resident in the Osborn moved in in 1975. New York State ended the "assignment process" after 1975.

### *Changes in Senior Care and Financial Struggles*

The operations of The Osborn Home remained largely unchanged from its 1908 opening until 1975. Beginning in the 1960s, a series of events revolutionized the field of aging services and the regulation of care of the aged. The passage of Titles XVIII and XIX of the Social Security Act established the Medicare and Medicaid programs and created regulations that govern the establishment and operation of nursing homes in the United States. Over the next two decades, the regulations governing nursing homes became increasingly more stringent and The Osborn fell under the regulatory arm of the New York State Department of Health as a licensed nursing home. Eventually the increases in the cost of labor, employee benefits and the cost of energy, combined with other factors, negatively affected The Osborn's financial integrity. As a result, occupancy declined precipitously, and the Board of Trustees began to ask difficult questions

Zoning Text Amendment Petition  
R-2 Senior Living Use

about the future of the institution.

*Pathway 2000 and Revitalization of The Osborn*

In 1988 the Board of the Osborn retained Mark Zwerger as the new Chief Executive Officer of The Osborn to lead an effort to restore its fiscal health and to create a sustainable operation to continue the operation of The Osborn in the vision of its founders. At that point, The Osborn's operations occupancy had dwindled to 115 residents with 60 of those residents fully supported financially by The Osborn. After three years of study the Board adopted a comprehensive plan to restore The Osborn to its original mission and create a sustainable charity in perpetuity.

This plan, titled Pathway 2000, was adopted by the Board on May 14, 1991. It called for the construction of 26 buildings, including 20 garden homes, three multistory apartment buildings, a natatorium, a gatehouse, and a new skilled nursing facility – “The Osborn Pavilion”. The project also included the renovation of the existing three buildings into rental accommodations for seniors. The plan was submitted to the City of Rye in November, 1992 and was approved by the City in June of 1993.

The official ground breaking for the new construction at The Osborn took place on November 6, 1994, which included the construction of the first 13 of the 20 garden homes, the 54-unit Sterling Park apartment building, the new gate house and a natatorium housing, a pool and the spa. At the same time the necessary renovations connecting the old and new construction were completed. The 2000 building and the garden homes opened in June of 1996. The original buildings were renovated in phases from 1997 to 1999. The final phase of Pathway 2000 commenced in January 2000 with the construction of the remaining two Sterling Park apartment buildings which opened in July of 2001. The official dedication of the Pathway 2000 Project took place on September 28, 2002.

In total, Pathway 2000 cost approximately \$120 million. The project was financed through two sources: the proceeds of the sale of tax-exempt bonds and the accumulation of 100 percent refundable entrance fees paid by Sterling Park residents. Those fees added up to about \$80 million, and the balance of bonds remaining at the completion of the project was about \$45 million.

Action was then taken by the Board and administration to petition the courts of New York for “decertification” of the Sterling Building from a nursing home to an independent living residence. Marketing initiatives included a new logo, a streamlined admission process and a contemporary new name – The Osborn.

The goal of Pathway 2000, to restore The Osborn to Miriam Osborn and John Sterling's vision and create a sustainable charitable operation into perpetuity, has been accomplished. The Osborn provides over \$3 million annually in free care to seniors in need. Over 400 residents call The Osborn “home” while 300 others annually come to The Osborn Pavilion for rehabilitation. Hundreds of seniors residing in the community have availed themselves of the care provided by Osborn Home Care.

## 2. THE OSBORN TODAY

### A. Profile

The Osborn offers a variety of programs geared toward the delivery of residential and health care services for its residents in independent living, assisted living, memory care and skilled nursing settings. The continuum of care also includes medical services, social and dietary services, occupational, physical and speech therapy, religious services, recreational activities, podiatry, ophthalmology, dentistry, transportation, a beauty salon, and a barber shop. Osborn Home Care provides home care services off campus in the surrounding communities and to campus residents. The average age of entry for new residents is 82 years and the average age of residents is 89 years.

*Sterling Park at The Osborn* consists of 148 entrance fee independent living apartments within three connected residential buildings and 40 garden homes in 20 duplex buildings. The garden homes contain attached garages, deck and basements.

*Assisting Living at The Osborn* consists of approximately 96 rental independent living and assisting living apartments within the Osborn (1908), Strathcona (1929) and Sterling Buildings (1938). All three buildings have been periodically renovated, most recently around 2000. There are five dining rooms, the main campus kitchen, two libraries, an interfaith chapel, beauty salon, 200-seat theater, conference and training rooms, lounges, and administrative and support staff offices.

*The Osborn Pavilion* is a skilled nursing facility containing approximately 84 private resident rooms in a separate building connected to the Sterling Building clustered in groups of seven and eight. The Osborn Pavilion is available by residents from other levels of care at The Osborn and from the outside community, and the facility offers skilled nursing care and inpatient and outpatient physical, occupational and speech therapy services. The common areas include two resident dining rooms, rehabilitation, activity areas, service and support areas and administrative offices.

The Osborn also provides memory care services that is designed to offer care for 13 residents in private rooms and several open areas for dining, art, music, exercise and leisure. The Memory Care Center is a distinct unit of the assisted living program to provide care for individuals with dementia who can perform most of the daily activities but benefit from professional care and support. Additionally, The Osborn offers residents with ongoing social, educational, entertainment and fitness facilities and programs.

### B. Community Services

During 2018, The Osborn provided the following senior living and healthcare offerings for Rye and area residents:

- 20-25% of Osborn residents (independent living, assisted living, skilled nursing) are

Zoning Text Amendment Petition  
R-2 Senior Living Use

- former Rye residents or are related to Rye families,
- over 60% of the 194 patients served by Osborn Home Care (which provides in-home assistance to seniors) were Rye residents (102 at The Osborn + 18 at private homes),
- 24% of the 600 short-term (generally 2-3 weeks) stays under the Osborn Inpatient Rehabilitation program were Rye residents (approximately 66 from The Osborn and 78 from private homes), and
- over 75% of the 255 outpatients assisted by the Osborn Outpatient Rehabilitation program were Rye residents.

*Commitment to Charity*

As stated on The Osborn's website, "Our mission is to provide exceptional living communities and health care, assure long-term financial security, and maintain our commitment to charity". The Osborn is committed to its role as a good corporate citizen in the City of Rye and Westchester County. During 2019, over \$3.5 million in scholarships were provided by The Osborn and Osborn Home Care.

The Osborn Foundation's philanthropic mission illustrates the breadth and depth of the organization's commitment to engaging the City of Rye and surrounding communities through meaningful initiatives and longstanding partnerships (See Exhibit IV.2-1, The Osborn Foundation 2018 Donor Report).

*Community Outreach and Partners*

The Osborn hosts many community events on its campus and supports many community organizations. Year-round programs and partnerships allow The Osborn to engage with members of the greater Rye community and support a diverse set of programs and initiatives.

One of its longstanding and celebrated community events is the annual Jack Miller Easter Egg Hunt. The Osborn partners with other Rye organizations for ongoing community programs, such as The Rye Nature Center for an Arbor Day program and the Rye YMCA for walking programs.

In its historic Auditorium, The Osborn hosts numerous WellSpring events open to the community, including musical and dance performances, book discussions by well-known authors, and academic lectures on topics as diverse as health, climate change, and culinary arts. These events occur approximately every other month and are well attended by community members (non-Osborn residents).

In addition, The Osborn supports dozens of organizations within Rye and throughout Westchester County, either with financial assistance or collaboration. The Osborn's senior managers participate as leaders in many of these community organizations, for example, the Rye Free Reading Room, the Rye City Lions Club, the Rye Rotary, the Rye Senior Advisory Council, SPRYE, the Alzheimer's Association (Hudson Valley Chapter), the Human Development Services of Westchester, and Hospice of Westchester.

# THE OSBORN FOUNDATION

## 2018

### DONOR REPORT



## MISSION

TO PROVIDE SUPERIOR LIVING COMMUNITIES AND HEALTH CARE SERVICES WHILE ASSURING THE OSBORN'S LONG-TERM FINANCIAL SECURITY AND MAINTAINING OUR COMMITMENT TO CHARITY.

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# LETTER FROM THE PRESIDENT AND CEO



Dear Residents, Families & Friends,

It has been a successful year at The Osborn as we continue to fulfill our vision of being unsurpassed as a great place to live, a great place for care, and a great place to work.

## A GREAT PLACE TO LIVE

With 10,000 baby boomers in the U.S. turning 65 every day, and so many living longer, The Osborn and Osborn Home Care continue to evolve to meet their needs. Our continuum of care model has never been more relevant and our above-average occupancy rates at all levels of care attest to that.

The Osborn is uniquely poised to respond to growing demand in ways that enhance the lives of our residents today and meet the needs of the next generation. Our expanded WellSpring programs create exciting opportunities for engagement across the continuum. We are looking ahead to identify new opportunities to serve residents on and off campus, as well.

## A GREAT PLACE FOR CARE

In 2018, our Pavilion skilled nursing center was recognized by U.S. News & World Report as one of New York's top performing nursing homes – both for skilled nursing and short-stay rehabilitation. The Pavilion also received a 5-star rating from the Center for Medicare Services. Although critical data points led to this recognition, it is our immeasurable compassion and genuine care for those we serve that are the foundation of our excellent reputation.

## A GREAT PLACE TO WORK

Our strong sense of community is intentional. We invest in training across the organization with results that benefit our residents every day. Programs like The Osborn's Leadership Academy, Novare's Leadership Development Program, and five-star training inspire employees to be the best they can be. Rewarding careers are born here and support solid levels of employee retention over many years.

Now in its fourth year, The Osborn Foundation recognizes a growing number of donors whose contributions help us to better serve our residents, our staff, and those in the community. The following pages show the spirit of philanthropy in action and lead the way for opportunities in the future. Highlights from 2018:

- **A significant grant** enabled us to repurpose the Adams Library porch into a four-seasons reading room named in memory of our friend and former trustee, William W. Mauritz.
- **A generous 'seed' donation**, appropriately given on Arbor Day, started the Tree Fund to renew our landscape and plant for future generations.
- **A memorial gift** has created a rooftop garden of native plants for residents and staff in Assisted Living.
- **A record number of resident contributions** to the Academic Achievement Awards and Employee Enrichment Fund illustrate the deep relationships between residents and staff.

We are so fortunate to live and work in this remarkable community. I am deeply grateful to the Board of Trustees for its leadership, to the management team and the entire staff for their unparalleled commitment, and especially to the residents and families who make our work so rewarding.

Sincerely,

A handwritten signature in blue ink, appearing to read "Matthew G. Anderson".

Matthew G. Anderson  
*President and Chief Executive Officer*

# The Osborn: 2018 *by the Numbers*

**1 of 4**  
in Westchester County

The Osborn Pavilion named  
Top Performing Nursing Home  
by U.S. News & World Report\*



Given to residents of The Osborn and  
clients of Osborn Home Care through  
The Charity Care Program

**\$3,300,000**

**2,000+**

People from neighboring  
communities attended events  
on campus



Local charities supported by  
The Osborn Foundation

**39**

**664**

Clients served by  
Osborn Home Care



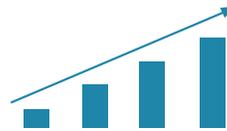
Overall rating by CMS (Medicare.gov) for Pavilion  
Skilled Nursing – including quality of care and low  
hospital readmission rates



**5-STAR**

**A-**

Fitch rating for  
financial stability



**46**

Students received Academic  
Achievement grants



\* U.S. News & World Report evaluated over 15,000 nursing homes across the country, including 619 licensed facilities in New York State. The Osborn Pavilion was one of nineteen that received the top rating in both categories, 'Overall' and 'Short-Stay Rehabilitation'; among only four facilities in Westchester County to receive this highest-performing rating in both categories.

# AROUND CAMPUS

Residents of The Osborn enjoy an active and inspiring lifestyle, as our WellSpring programs expand across the continuum of care. New interests and engaging relationships develop against the backdrop of beautiful spaces – both inside and out.



Rye Garden Club tea in the Betty Neagle Garden.



Marlene DeMartino, Jackie Berlin and Gloria Salomone at Monte Carlo Night.



Dr. Cahill and Mrs. Chateauvert went to Manhattan for the Celtic Medical Society dinner.



Leone and Nancy Risman enjoyed the Dog Days of August with canine contestant, Patrick.



Walkers Larry Klein, Nancy Nightingale and Barbara Manley during The Sterling Challenge.



Intergenerational programs let high school students spend time with residents.



CEO Matt Anderson, COO Chris Ferreri and Sterling Park Director Michele Schreer honored residents celebrating birthdays from 100 to 108!



Regina Slawek and Barbara Francis expanded their artistic skills at Paint Night.



CEO Matt Anderson and Board Chair Bill Pearson joined a Pickleball game with residents and the Model family.



# FOUNDRESS LUNCHEON

Over 200 people joined us for the September Foundress Award Luncheon – “Women Who Make a Difference.” A lively blend of friends from Rye and surrounding communities, residents of The Osborn, and business supporters joined us to honor Dr. Donna Coletti, Founding Medical Director of the Corman Palliative Care Service at Greenwich Hospital, and Joan Feinstein, Esq., past Mayor of Rye Brook, Board member of SPRYE and the League of Women Voters. Speaker Julie Scelfo, author of *Women Who Made New York*, shared photos and tales about Manhattan’s movers and shakers. Proceeds went to support The Charity Care Program and the renovation and expansion of the Adams Library.



Honoree Dr. Donna Coletti.



Dr. Kathy Pike with her mother, Mary Johnson.



Honoree Joan Feinstein visits with guests Debbie Faust and M.J. Wolff.



Maria Hale, Debby Hansen and Carolyn Mauritz.



Board Chair Bill Pearson with his wife, Jane.



Trustees Lucien Burnett and Jim Buckley with Janet Burnett.



CEO Matt Anderson and Trustee George Pawlusch with honoree Donna Coletti, past honoree Kathy Carley-Spanier, and guests from Greenwich Hospital.



Elisabeth Mitchell with her parents, Mary and Bob Magnus.



CEO Matt Anderson with Carolyn Mauritz and McGraw Foundation Trustee Scott Elrod.

## MAURITZ READING ROOM

The beautiful William W. Mauritz Reading Room was unveiled in June 2019. A generous gift from the McGraw Foundation in memory of our shared friend and trustee, Bill Mauritz, along with donations from so many of our residents and others, enabled The Osborn to convert a screened porch into a glass-walled reading room just off the Adams Library. Cool in the summer and warm in the winter, this extraordinary space brings together intellectual pursuits of our library and four season views of nature in a way that can only be done at The Osborn.

Spring view from the William W. Mauritz Reading Room.





## THE LEGACY OF THE OSBORN TREES

In April 2019, residents of The Osborn gathered in the sunshine on the South Lawn to celebrate Arbor Day. Guides from The Rye Nature Center led tours to introduce residents and staff to various species of trees as part of the program. A baby linden tree was also planted to replace the old linden tree near the putting green that had been damaged in a recent storm.

President and CEO Matt Anderson praised our benefactor John Sterling and his legacy of planting and nurturing the trees on our park-like campus. There were 2,258 on our campus when we opened in 1908. Over the years, we have done our best to maintain the splendor of our many trees – over 1,000 now, with 82 different species! Of course, as with any life cycle, trees do die from age, pests, and extreme weather.

Thanks to the expertise of former resident Dr. David Blank, the knowledge and enthusiasm of resident George Berlstein, and a generous ‘seed’ donation from a resident, we are expanding our commitment to campus stewardship by introducing a fund within The Osborn Foundation. In order to ensure that these beautiful trees are here for all to enjoy today and for those who follow us, the Tree Fund will be used to expand the role of our professional arborist, provide funding for new replacement trees, and ensure additional care for our existing trees over time.

We hope you will consider joining us in this important initiative by making a contribution, pledge, or dedicated legacy gift to The Osborn Foundation. Together we can protect our majestic trees today and ensure the beauty of our extraordinary campus for generations to come.



# MIRIAM OSBORN'S PROMISE

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We have the good fortune of living longer than our parents' generation. However, as the cost of health care rises, the blessings of a long life create concerns for some people about whether their retirement savings will be enough. The vision of our Foundress, Miriam Osborn, was that residents would never have to leave our community due to lack of financial resources. Over 110 years later, The Osborn is still fulfilling that promise. In 2018, we provided \$3.3 million to ensure peace of mind for our valued residents and their families. They enjoy all the programs and amenities that come with living at The Osborn, including the security of additional care in The Pavilion if ever needed.

You can make a profound difference in the life of a friend or neighbor at The Osborn with a gift to The Osborn Charity Care program. The sense of well-being that Miriam Osborn envisioned for those living in our community is more important than ever.

**“I have never felt so well cared for!” ~ Charity Care resident in The Pavilion**

## WAYS OF GIVING

---

All gifts to The Osborn Foundation help advance our mission to provide the finest residential programs and care for residents and those we serve in our community. Here are some of the ways you can give:

### DIRECT GIFTS

By check, payable to **The Osborn Foundation**.

By credit card, on our secure website ([www.theosborn.org/giving](http://www.theosborn.org/giving)).

### PLANNED GIVING

Planned gifts, including charitable gift annuities and trusts, can offer advantages of lifetime income, as well as tax savings. You can also make The Osborn Foundation the beneficiary of your IRA, life insurance, or retirement plan. The Osborn Foundation (Tax ID #47-4600655) is located at 101 Theall Road, Rye, NY 10580.

### GIFTS OF STOCK

A gift of securities that you have owned for at least one year is eligible for a tax deduction based on the market value of the gift on date of transfer.

### MATCHING GIFTS

Ask if your employer has a matching gift program. Matched gifts effectively increase the value of your donation.

### MEMORIAL OR HONORARY GIFTS

You may wish to make a gift made In Memory of or In Honor of a family member, friend, staff member, or someone in the community.

*For more information, contact Jennifer Christensen (914-925-8372) or via email ([jchristensen@theosborn.org](mailto:jchristensen@theosborn.org)).*

# 2018 DONATIONS TO THE OSBORN FOUNDATION

The Osborn is deeply grateful to the individuals, families, Trustees, staff, and businesses who contributed to advance the mission of our organization through charitable gifts last year. The following lists include the names of those who made donations to The Osborn Foundation between January 1 and December 31, 2018.

## LEADERSHIP GIFTS (\$5,000 AND ABOVE)

Anonymous	Mr. Eugene Galbraith	The McGraw Foundation
Mrs. Edward Hyde Burdick	In Memory of Virginia Galbraith	Mr. Worthington Mayo-Smith
The Barbara Dorsch Foundation	Greenwich Hospital	Mrs. Frances Magee
The Ruldolph & Hilda U.	Mr. Franklyn Kraus	The Edward Tinker Fund
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**Donor Key:**  
 T = Trustee TE = Trustee Emeritus S = Staff

## GIVING BY DOING



**ALZHEIMER'S WALK**

The Osborn supports the regional Walk to End Alzheimer's with funding; Team Osborn volunteers who walk to raise awareness, as residents cheer them on.



**MY SISTERS' PLACE**

Residents in the knitting group donate their talents to make items for local charities like My Sister's Place, for chemotherapy patients at Greenwich Hospital, and residents of The Osborn Pavilion.

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 Mrs. Mary T. Johnson  
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 Mrs. Maril Kaiser  
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 Mrs. Marie Pisani  
 Mr. Werner L. Polak (T)  
 Mr. Sydney Posner  
 Mrs. Elizabeth Quigley  
 Mr. Aaron Rabin  
 Ms. Linda Rappaport (T)  
 Mrs. Mary Jo Razook  
 Mrs. Doris Reade  
 Ms. Bonnie H. Reiner  
 Mrs. Debbie Reisner  
 Mrs. Mary Reville  
 Mrs. Gloria Richmond  
 Mrs. Florence Rinaldi  
 Mrs. Randi S. Robinowitz  
 Mr. & Mrs. Ted Rogers  
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 Mr. & Mrs. Roderic L. Rolett (T)  
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 Romstone Fabrication, Inc.  
 RLPS Architects  
 Mrs. Barbara Rosenberg  
 Michael and Karen Rosner  
 Mr. David Ross  
 Mr. & Mrs. Joel Rotner  
 Mrs. Ann Rouchaud  
 Mrs. Mildred Rumack  
 Dr. Ruth Ruth  
 Mrs. Ellen Ryan  
 Mr. Ken Giaquinto,  
 Rye Beach Pharmacy  
 Rye Senior Citizens Club  
 Mrs. Marjorie Sacks

## GIVING BY DOING



MIRIAM'S ATTIC

The Osborn's resale shop provides a useful service for residents, staff and neighbors who are downsizing or looking for a bargain. Proceeds benefit The Charity Care program.



DONATING EYEGLASSES

Residents from Sterling Park and staff collected glasses that are recycled by the Rye City Lions Club for those in need in our community and nationwide.

Alan and Sherry Salzman  
 Elliot and Marilyn Satinoff  
 Thomas and Emily Saunders (T)  
 Mrs. Nancy Saylor  
 Senior Salon Services  
 Mr. & Mrs. Douglas Shanks (T)  
 Mr. & Mrs. Stephen Shapiro  
 Mr. Donald Sharp  
 Mrs. Penelope Shaw  
 Mrs. Margaret Sheehan  
 Mrs. Mary Sheerin  
 Mrs. Tapley Sheresky  
 Mrs. Mary Silk  
 Frank and Theodora Silvestri  
 Richard and Freyda Simon  
 Mrs. Debbie Simpson  
 Mr. Richard Sincere  
 Mr. Howard Sklar, Gemini Blinds  
 Mrs. Regina Slawek  
 Mrs. Irene Sokol  
 Mrs. Claire Sorkin  
 Mrs. Natalie Spencer  
 Ms. Mary Spengle,  
 Hospice of Westchester  
 Mrs. Beverly Spitzer  
 Ms. Marie Johnson, SPRYE  
 Dr. Christine Staeger-Hirsch  
 Mrs. Judith Steers

James & Barbara Steffensen (T)  
 Mr. & Mrs. Abraham Stenberg  
 Mr. Bosiljka Stevanovic  
 Mrs. Catharine Sturgess  
 Mrs. Charlotte Sullivan  
 Mrs. Kristine Sunden  
 Mrs. Anne Sutcliffe  
 Porter Sutro  
 Bradley and Cynthia Sweeny  
 Mrs. Marie Tallevi  
 Mrs. Elaine Tashman  
 Mrs. Debra Ann Tempesta  
 Mrs. Nancy Thompson  
 Leslie and Susan Tolchin  
 Dr. & Mrs. Charles Toter  
 Mr. Lou Tripodi,  
 Tripodi's Appliance Warehouse  
 Mrs. Ann Unger  
 Ms. Karen Unger  
 Ms. Susan Valk  
 Mrs. Gina R. Valvona  
 Mr. Peter Volgyes  
 Mr. Paul Walsh  
 Mrs. Jeanne Ward-Fowley  
 Ms. Jaime Warner  
 Mr. & Mrs. Douglas P. Warwick  
 Mrs. Anita Waxberg  
 Miss Jane Weidlund

Ms. Betti Weimersheimer  
 Mrs. Clarice Weiner  
 Mrs. Wendy Weinreb  
 Mr. Morton Weintraub  
 Mrs. Elaine Weir  
 Mr. Leon Weisburgh  
 Bruce and Lillian Weitz  
 Ms. Michele W. Fredman,  
 Wertheimer Fredman, LLC  
 Mrs. Joan Whipple  
 Mr. John C. Whitaker, Jr.  
 Ms. Betsy Buttrill White  
 Mrs. Jacqueline Williams  
 Mrs. Marilyn Winer  
 Mrs. Mickey Wolf  
 Mr. William Wolff  
 Mrs. MJ Wolff  
 Mr. Cabell Woodward  
 Mrs. June Wootton  
 Mr. & Mrs. Susumu Yamada  
 Mrs. Gladys R. Yourman  
 David and Amy Zagin  
 Anna & Anton Zauner  
 Mrs. Marjorie Zeidman  
 Mrs. Susan Zellweger  
 Salvatore and Rosemarie Zito

## IN MEMORY OF

### Rosemary Alexander

Judy and Larry Klein  
 Mr. & Mrs. Robert B. Magnus, Jr.

### Rosann Catania

Mrs. Alicia Castle  
 Mrs. Frances Magee  
 Mrs. Janet Malang

### Barbara Chapin

Judy and Larry Klein

### Doris Cypher

Mrs. Lisa Ashley  
 Jason & Renee Nichols  
 Mrs. Ellen Ryan  
 Tim & Carol Cawley

### Ellie Fleisch

Mr. Harry Fleisch

### Virginia F. Galbraith

Mr. Eugene Galbraith

### Christian Garcia

Anonymous

### Nancy Giambo

Mr. Rohan Amin  
 Mrs. Sylvana Ballantoni  
 Dr. Ann C. Cea  
 Mr. Curtis Cranet  
 Dr. Christopher J. Duffy  
 Mrs. William G. Flower

### Donor Key:

T = Trustee TE = Trustee Emeritus S = Staff



## EXTRAORDINARY ELDER

Resident Alice Model (second from left) was nominated for the LeadingAge Extraordinary Elder Award for her countless volunteer activities on campus and in the community. She also entertains us with the Penthouse Quartet and the Westchester Chorale.



## PET THERAPY

Resident Don Fowley and certified therapy dog, Thunder, talk to local children on Flag Day about the role of a therapy dog. Mr. Fowley and Thunder make the rounds visiting residents and rehab patients in The Osborn Pavilion every Thursday. **11**

# 2018 DONATIONS TO THE OSBORN FOUNDATION

David & Ann Hall  
 Mrs. Jane Johnston  
 Mrs. Marcia Kalkut  
 Mrs. Eve Kalevas  
 Mrs. Kak Lau  
 Mr. Ross Lazio  
 Nick & Paula Longo  
 Alexander & Karen LoRusso  
 Mr. & Mrs. Robert B. Magnus, Jr.  
 Mr. & Mrs. Frank McCullough  
 Mrs. Helen I. Pagniello  
 Mr. Aaron Rabin  
 Mrs. Barbara Rosenberg  
 Rye Senior Citizens Club  
 Frank & Theodora Silvestri  
 Dr. Christine Staeger-Hirsch  
 Dr. & Mrs. Charles Totero  
 Salvatore & Rosemarie Zito  
 Anna & Anton Zauner

**Dorothy Havlicek**  
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**Julie Kassas**  
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**Betty Landauer**  
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 Ms. Maryanne Lavan

**Josephine M. Lettera**  
 Mrs. Lucy A. Lettera

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**Gertrude Mann**  
 Mr. Douglas Mann

**William W. Mauritz**  
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 Charles & Katharine Berry  
 Mr. John Blumenthal  
 Mr. & Mrs. Drew Boden  
 Allen & Whitney Clark  
 Mrs. Judy Colbert  
 J.W. Curtis  
 R. Demarest & Margaret Duckworth  
 Gerald & Edith Falk  
 Mrs. Frances A. Ginsberg  
 Mrs. Nancy Haneman  
 Kenneth & Toni Harkness  
 Michael & Joan Hass  
 Mr. Paul Hicks  
 Bill & Mary Clare Jenks  
 Mr. William Jenks  
 Jeffrey & Diane Jennings  
 Bert & Dot Kalet  
 Mark & Paula Kandl  
 Kenneth & Martha Knowles  
 Eugene & Lynne Magurno  
 Henry & Priscilla Maresi  
 Mrs. Marilyn Mauritz  
 John & Carole McDougall  
 The McGraw Foundation  
 Mrs. Martha Monserrate  
 Mr. & Mrs. William Pierce  
 Ms. Penelope Shaw  
 Mr. & Mrs. John C. Whitaker, Jr.  
 Mrs. Betsy Buttrill White

**Jack Miller**  
 Mr. George Pawlush (T)

**Judith Rab Morgan**  
 Mrs. Victoria Amon

**Monica Morrissey**  
 Mrs. Christine Duncan

**Claire Newman**  
 Dr. Edwin Newman

**Joan Pine**  
 Mr. & Mrs. John C. Pine

**Donald Reich**  
 The Reich Family

**Constance Reich**  
 Mr. & Mrs. Robert B. Magnus, Jr.

**Gloria Rennert**  
 Mrs. Edward Hyde Burdick

**Maxine Ribner**  
 Norman & Alison Axelrod  
 Dean & Debra Brody  
 Mrs. Linda Eifer  
 Mrs. Melissa Fertig  
 Robert & Kimberly Gatof  
 Dr. Trevor Harris  
 Dr. & Mrs. David Holtzman  
 Mrs. Ronnie Kirsch  
 Mrs. Katina Mayer  
 Elliot & Marilyn Satinoff  
 Richard & Freyda Simon  
 Mr. Richard Sincere  
 Bruce & Lillian Weitz  
 David & Amy Zagin

**Dr. Jody Ross**  
 Mr. David Ross

**Selma Ross**  
 Mr. David Ross

**Jack Rouchaud**  
 Mrs. Ann Rouchaud

**Ann Silver**  
 Mrs. Margie Granik  
 Mr. & Mrs. Robert B. Magnus, Jr.  
 Mr. Dan Silver

## GIVING BY DOING



**VOLUNTEER TEA**

Residents and members of the community volunteer in many areas of The Osborn to enrich the experience for those who live here.



**SUPPORTING HEART HEALTH**

Managers and staff of Osborn Home Care participated in a campus-wide program to raise awareness about the importance of maintaining a healthy heart.

## IN HONOR OF

### Dr. Donna Coletti

Ms. Robin Kanarek  
Ms. Eileen O'Shea  
Ms. Gina Trovato

### Ms. Joan Feinstein

Ms. Joyce Askinasi  
Ms. Debbie Falik  
Paul & Ross Feinstein  
Mr. Richard Feinstein  
Ms. Leslie Levin  
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Ms. Marcie Nadler  
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Mrs. Maril Kaiser  
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Mrs. Nancy Sayler  
Mr. Doug Shanks (T)  
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### Mrs. Gladys Roth

Mrs. Margie Granik  
Mrs. Gertrude Lessem  
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### Mr. Leon Starr

Mrs. Barbara Jackson

## GIFTS IN KIND

The American Clock and Watch Museum  
Arthur Murray Dance Studios  
Brae Burn Country Club  
Brant Foundation Art Study Center  
Brooklyn Botanic Gardens  
Bruce Museum  
The Burke Family  
Lucien Burnett, III (T)  
CBS - Entercom/NY  
Caramoor Center for Music and  
The Arts, Inc.  
Paul & Jennifer Christensen (S)  
Jill Chwatt

Doral Arrowwood  
Emelin Theatre  
Fogama Japanese Restaurant  
Golf Club of Purchase  
Grand Prix NY Racing & Spins Bowl, LLC  
Greenwich Symphony Orchestra  
Home Limousine Service  
House of Fins  
Jacob Burns Film Center  
Kramer Portraits NYC  
Locust Grove Estate  
Long Wharf Theater  
Susie Mantell/Relax Intuit

Miriam's Attic  
New Wave Seafood  
Old Westbury Gardens  
Redi Cut Carpets  
Rye Beach Pharmacy  
Storm King Art Center  
Westchester Broadway Theatre  
Westchester Children's Museum  
White + Warren  
Wine at Five

### Donor Key:

T = Trustee TE = Trustee Emeritus S = Staff

*Every effort was made to ensure the accuracy of this list. If your name was inadvertently omitted, please accept our sincere apology and let us know so that we can update our records. You can email updates to [philanthropy@theosborn.org](mailto:philanthropy@theosborn.org) or write to Jennifer Christensen, The Osborn Foundation, 101 Theall Road, Rye, NY 10580. Thank you!*



## ACADEMIC ACHIEVEMENT AWARD

In 2018, the resident-led Academic Achievement Award program generated gifts for 46 children of employees who are pursuing higher education. Many are the first in their families to do so!

Save the Date

# Women Who Make a Difference

**Luncheon**  
**Wednesday, October 2 at 11:30 am**

HONORING:

**Dawn French**, *Senior Vice President,  
Marketing & Community Outreach, White Plains Hospital*  
**Jana Seitz**, *President, Edith G. Read Wildlife Sanctuary*

GUEST SPEAKER:

**Carrie Rebora Barratt**  
*CEO and President of The New York Botanical Garden*

**For sponsorship opportunities: [philanthropy@theosborn.org](mailto:philanthropy@theosborn.org)**

**[RSVP@theosborn.org](mailto:RSVP@theosborn.org)**



The Osborn, Osborn Home Care, and The Osborn Foundation are part of The Osborn Network, a 501(c)(3) non-profit charitable organization that offers a continuum of care community for seniors. It includes independent living, assisted living, memory care through the H.O.P.E. Center, long-term skilled nursing care, short-term and out-patient rehabilitation, and home care services in Westchester and Fairfield Counties.

The Osborn is accredited by CARF ([www.carf.org](http://www.carf.org)) which is widely recognized as the highest standard of excellence for retirement communities. In addition, The Osborn has an A- Fitch rating for its financial strength, a rare accomplishment among retirement communities.



**The Osborn**  
**The Osborn Foundation**

101 Theall Road  
Rye, NY 10580  
914-925-8000  
888-9-OSBORN  
[www.theosborn.org](http://www.theosborn.org)

**Osborn Home Care**

101 Theall Road      125 Mason Street  
Rye, NY 10580      Greenwich, CT 06830  
914-925-8221      203-641-7683  
[www.osbornhomecare.org](http://www.osbornhomecare.org)

### C. Economic Benefits

#### *Fiscal History & Context*

In the period from 1950 to 1970 The Osborn Board sold off landholdings surrounding the existing campus to generate funds for its operations. Property that was sold was developed with corporate office space and a portion of the land was sold for residential development. A parcel at the corner of Boston Post Road and Osborn Road was sold to the Rye School District, which constructed the Osborn Elementary School. Property that was sold by The Osborn, other than the property purchased by the School District, was added to the city tax rolls as it had previously been tax exempt.

In May of 1996, amid all The Osborn's new construction, the City of Rye revoked The Osborn's century old real estate tax exemption. Following a court ruling, The Osborn and the City agreed on a settlement of the real estate tax issue by The Osborn paying a reduced amount of real estate taxes on an annual basis in the area of 50% of the original assessment imposed by the City in 1996. The agreement between The Osborn and the City remains in place and is not proposed to be changed by this current application.

In 1996, upon the opening of the first facilities, Sterling Home Care, The Osborn's licensed home care services agency, was established. Today the agency, renamed Osborn Home Care, provides over \$13 million annually in exceptional home care both on the campus and in the community. The Osborn currently holds an investment grade rating from Fitch and has achieved the financial sustainability that was the key motivation for Pathway 2000.

The Osborn also contributes directly to the Rye Economy. Organizational expenditures at local service providers and merchants exceeded \$500,000 in 2018, which did not include local spending by Osborn residents and staff. Approximately 5% of The Osborn's 400+ staff members are Rye residents.

#### *Taxes*

Tax revenue generated by The Osborn are based on the existing assessed value by the City of Rye, multiplied by the tax rate for each of the applicable taxing districts (Town, County, School and Special Districts). The project site has a current total assessed value of \$2,133,120. (see Table IV.2-2).

**Table IV.2-2: Current (2019) Assessed Value of Project Site (SBL 146-13-1-8)<sup>1</sup>**

Full Market Value	Uniform Percent of Value (Equalization Rate)	Assessed Value		
		Land	Improvements	Total
\$136,738,461	1.56	\$969,000	\$1,164,120	\$2,133,120

<sup>1</sup> City of Rye, 2019 City Final Roll. <https://www.ryeny.gov/Home/ShowDocument?id=10566>

Zoning Text Amendment Petition  
R-2 Senior Living Use

Real estate taxes are levied on the Project Site by the Town/County (general fund and special districts) and the School District. In sum, the tax rates applicable to The Osborn total \$1,079.43 per \$1,000 assessed value. Based on the 2019 tax rates multiplied by the current assessed value, The Osborn currently generates approximately \$2,302,558 in property taxes, as shown on Table IV.2-3. The Rye City School District receives the largest tax levy of approximately \$1,365,881. The County and City receive approximately \$559,626 and \$377,050, respectively.

**Table IV.2-3 – Existing Property Taxes (2019)**

<b>Existing Taxes (Annual)</b>	<b>Tax Rate per 1,000 A.V. <sup>2</sup></b>	<b>Total</b>
<b>City of Rye</b>	\$176.76	\$377,050.29
<b>Westchester County</b>		
County	\$207.882242	\$443,437.77
Mamaroneck Valley Sewer District	\$36.898957	\$78,709.90
Refuse Disposal District #1	\$17.569873	\$37,478.65
<i>Sub-total County</i>	<i>\$262.351072</i>	<i>\$559,626.32</i>
<b>Sub-Total Town/County</b>	<b>\$439.11</b>	<b>\$936,676.61</b>
<b>Rye City School District</b>	\$640.320700	\$1,365,880.89
<b>Total</b>	<b>\$1,079.43</b>	<b>\$2,302,557.50</b>

The Osborn contributes significantly to the Rye economy as the second largest taxpayer in the City. The proposed zoning text amendment is anticipated to facilitate the future expansion of housing choices and amenities offered to residents of The Osborn. Future improvements on the campus are expected to increase the full market value of the project site. An increase in full market value of The Osborn will likely result in a reassessment of the value of the improvements on the land, subsequently increasing the amount of taxes levied on the property from the City of Rye, Rye City School District and Westchester County.

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<sup>2</sup> 2019 Tax Rates based on City of Rye Comptroller’s office (2019 County Detail Report, 2019 City Detail Report) and Rye City School District.

### 3. THE OSBORN FUTURE

#### **A. Need for Osborn To Respond to Changing Senior Living Needs**

The three oldest “SOS” buildings in the center of the campus – Osborn (1908), Strathcona (1929) and Sterling (1938) are stately and historic but were certainly not planned with the needs of today’s seniors and caregivers in mind. Their long hallways result in extended walking distances for residents and staff. Their relatively small rooms have limited appeal as independent living apartments and lack features present in units specifically designed to facilitate assisted living.

Renovations made and new buildings constructed at The Osborn during the mid-1990’s are now nearly 25 years old. The converted assisted living units in SOS have proven to be too small to invite couples or singles to readily make the transition from independent living to assisted living on campus. As residents in the new Sterling Park independent living apartments start to age-in-place, the distances to the converted activity and gathering spaces in the SOS buildings become more challenging to walk. While the single-level cottages were initially seen as attractive to people transitioning from single-family homes, they remain so but are also not conducive to walking to dining and community spaces in other buildings, particularly during inclement or winter weather.

People considering senior living opportunities in Westchester or lower Fairfield County today have many options to consider. New independent living or “55+” communities have been built or are planned along the Sound Shore, in southern and central Westchester, as well as in the northern sections of the County. Assisted living residences, either standalone or as part of a larger senior facility, are operating or proposed in the same areas.

Through the proposed zoning text amendment, The Osborn is seeking greater adaptability to ensure it can provide residents with modern amenities and high-level services, critical to compete in the rapidly evolving senior living landscape.

#### **B. Future Scope of Improvements**

The proposed zoning text amendment is anticipated to provide The Osborn with the necessary flexibility to achieve its goals while maintaining the character of its campus and the surrounding neighborhood. Specific objectives for these changes include:

- Independent Living – increasing the range of offerings to provide:
  - Opportunities for more connectivity with other residents to encourage socialization
- Larger apartment sizes than currently available (500 to 1,000 square feet larger than existing Sterling Park units)
  - Hospitality-level amenities and support areas
  - Communal activity and gathering spaces in close proximity to the residences

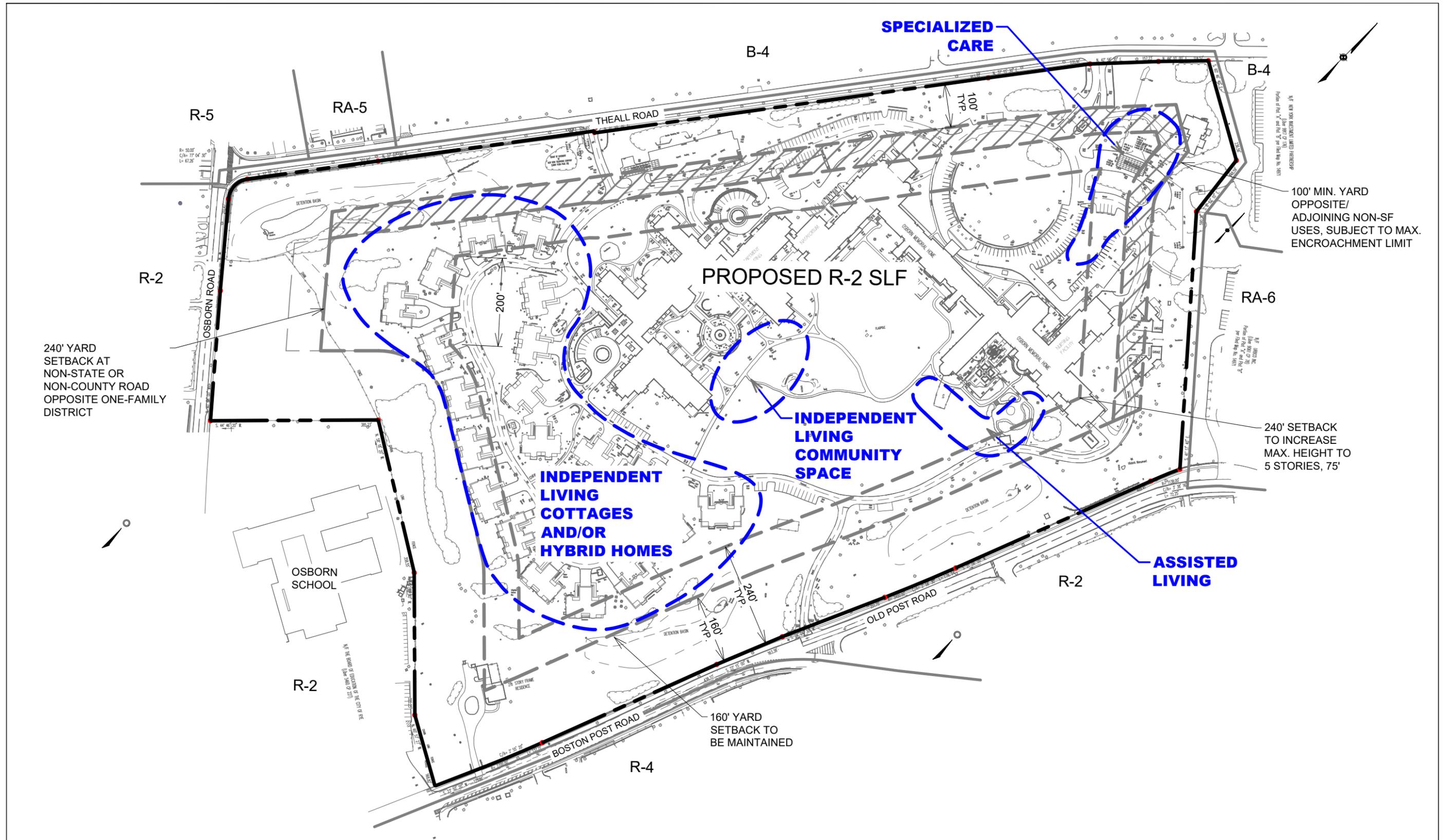
Zoning Text Amendment Petition  
R-2 Senior Living Use

- Assisted Living – adding to the types of options available to reflect current models of care and to provide:
  - Larger and more inviting units, to encourage couples and singles to transition from Independent Living apartments when one or both require additional levels of care
  - More specially designed units to serve residents with memory care or behavioral care needs
- Specialized Care – provision of dedicated space to house support facilities related to existing Osborn specialized care offerings, such as Osborn Home Care.

A concept diagram illustrating possible locations of future use areas within which these changes would be implemented on the campus is provided as Exhibit IV.3-1, Proposed Future Use Areas. The diagram shows:

- **Independent Living (IL) Hybrid Homes** – within the southern portion of the site currently occupied by 20 duplex cottages, a series of multi-unit Independent Living buildings (“hybrid homes”) would replace some or all the existing IL cottages over time. Within these four-five story IL buildings, up to five independent living apartments per floor would share a common gathering space to encourage sociability and interaction between neighbors, and structured parking would be provided on the first level. Up to 80 additional IL units could be located within this area.
- **Independent Living (IL) Community Space** – on the east side of the Sterling Park courtyard, a connected IL support building would add new gathering and dining options in close proximity to those existing IL apartments and the cottages and/or hybrid homes.
- **Assisted Living (AL)** – a new assisted living facility with larger and more specialized units and support services would flank the Betsy Neagle courtyard adjoining the existing AL and Pavilion nursing home facilities. Up to 50 additional AL units could be located within this area.
- **Specialized Care** – a specialized care support building would be located adjoining The Osborn main entry circle.

The Osborn anticipates that these future improvements would be proposed over a ten to fifteen-year period, with separate or combined special permit and site plan approval applications submitted to the City of Rye for each set of building and site improvements.



# THE OSBORN

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## V. ENVIRONMENTAL ASSESSMENT

# THE OSBORN

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## V.1. ZONING AND LAND USE

Zoning Text Amendment Petition  
R-2 Senior Living Use

1. ZONING AND LAND USE

**A. Rye Zoning Code**

The Osborn campus lies within the City of Rye R-2 zoning district. Similar to other R districts in Rye, the only Permitted Main Use in the R-2 District is a “single detached residence on its own lot for not more than one family.” The minimum lot size in the R-2 District is ½ acre. See City of Rye Code § 197-86 Table A, Columns 1 and 6 in Exhibit V.1-1.

Certain other land uses listed in §197-86 Table A Column 2 are permitted within the R-2 district subject to additional requirements, including educational uses, public recreational uses, private recreational uses, and “extension of welfare uses”:

*(4) Extension of welfare uses. Extension of homes for the aged, religious institutions and public health research institutions operated by nonprofit corporations organized under the laws of the state, in existence on or for which a permit was authorized before January 1, 1958. Any building or structure in connection with such use shall not be located less than twice the specified distance from any lot line, subject to the same regulations as for educational uses. The Planning Commission shall determine on-site parking requirements based on good standard practice for the size and type of activity.*

As The Osborn is a home for the aged operated by a New York nonprofit corporation that was in existence before January 1, 1958, additional development of its facility would qualify under “extension of welfare uses.” The dimensional regulations applicable to such extensions are limited, however, to:

- Building or structure setbacks – “not less than twice the specified distance from any lot lines”
- “Same regulations as for educational uses,” which per §197-86 Table A Column 2 Use 1 include:
  - “sites not less than 10 acres in area”
  - “no building, parking area or grounds for organized games or sports shall be located within the specified distance from any side or rear lot line adjoining property zoned for residence”
  - “such buffer space shall be so densely landscaped as to provide effective visual and sound screening of such activities or left in its natural state if this will fulfill the screening objectives”

The “specified distance” within the R-2 district is 80 feet (§197-86 Table A Column 12). The dimensional regulations for the “extension of welfare uses” within the R-2 district therefore include:

- Minimum lot size - 10 acres
- Minimum setback, building or structure - 160 feet
- Minimum side/rear lot adjoining property zoned for residence setback, parking area or grounds for organized games or sports – 80 feet

Zoning Text Amendment Petition  
R-2 Senior Living Use

- Minimum buffer landscaping requirements - as described above

## Chapter 197. Zoning

### Article VIII. Tables of Regulations

#### § 197-86. Tables of regulations.

Use, area, height, yard, coverage and flood area ratio requirements in the various districts shall be as follows, subject to such exceptions and limitations as are specified in other sections of this chapter:

**TABLE OF REGULATIONS: TABLE A**  
**RESIDENCE DISTRICTS — USE REGULATIONS**

**Column 1**

**Permitted Main Uses**

R-1, R-2, R-3, R-4, R-5, R-6 and RS Districts

- (1) Houses. A single detached residence on its own lot for not more than one family.

RT Districts

- (1) Uses permitted in R-6 Districts. Not subject to additional standards and requirements.
- (2) Houses for two families. A detached house on its own lot for not more than two families or housekeeping units, or a house for not more than one family on each side of a party wall; such house shall be deemed a single main building.

RA-1 Districts

- (1) Uses permitted in RT Districts not subject to additional standards and requirements.
- (2) Apartments. A detached residence for three or more families or housekeeping units, or a group of buildings housing three or more families on one lot, subject to the requirements of § 197-7.

RA-2 Districts

- (1) Uses permitted in RA-1 Districts not subject to additional standards and requirements.

RA-3 Districts

- (1) Uses permitted in RA-1 Districts not subject to additional standards and requirements.
- (2) Nontransient hotels and lodging houses. A hotel or lodging house for any number of guests but not primarily for transients, provided that a structure with six or more guest sleeping rooms shall be subject to the requirements of § 197-7.

RA-4 Districts

- (1) Uses permitted in RA-1 Districts not subject to additional standards and requirements.

RA-5 Districts

[Added 4-21-1982 by Ord. No. 2-1982, readopted 11-21-1984 by Ord. No. 1-1984]

- (1) Apartments for senior citizens and handicapped. A detached residence for three or more families or housekeeping units or a group of buildings housing three or more families on one lot, undertaken by private nonprofit sponsors with public financial assistance, subject to the requirements of § 197-7.

RA-6 Districts

[Added 12-2-2015 by L.L. No. 1-2016]

- (1) Apartments for active seniors. A detached residence for three or more families or housekeeping

units, or a group of buildings housing three or more families on one lot, subject to the requirements of §§ 197-7 and 197-8.1.

**RFPW Districts**

[Added 11-18-1981 by L.L. No. 9-1981]

- (1) Any combination of the following residential uses on the same lot, subject to the requirements of § 197-13.1:
  - (a) Houses. Single detached residences for not more than one family.
  - (b) Houses. Houses for two families. A detached house for not more than two families or housekeeping units, or a house for not more than one family on each side of a party wall, such house to be deemed a single building.
  - (c) Apartments. Single detached residence for three or more families or housekeeping units.

**LPD-A District**

[Added 6-15-1983 by L.L. No. 5-1983]

- (1) Single-family detached residences for not more than one family, subject to the requirements of § 197-13.2.
- (2) Jay Mansion: A detached single-family residence for not more than one family or a multifamily residence for not more than three dwelling units and not more than one family per dwelling unit, as required by and subject to the requirements of § 197-13.2.
- (3) Carriage House: A detached single-family residence for not more than one family or a multifamily residence for not more than six dwelling units and not more than one family per dwelling unit, as required by and subject to the requirements of § 197-13.2.

**TABLE OF REGULATIONS: TABLE A  
RESIDENCE DISTRICTS USE REGULATIONS**

**Column 2**

**Uses Permitted Subject to Additional  
Standards and Requirements**

**(Subject to the requirements and provisions of § 197-10)**

**R-1, R-2, R-3, R-4, R-5, R-6, RS and RT Districts**

- (1) Educational uses. Public schools and private and parochial schools with curricula similar to those of public elementary and secondary schools and operated under the Education Law of this state on sites not less than 10 acres in area (except that in RS Districts any school shall be on a site not less than 1/3 acre), provided that no building, parking area or grounds for organized games or sports shall be located within the specified distance from any side or rear lot line adjoining property zoned for residence and that such buffer space shall be so densely landscaped as to provide effective visual and sound screening of such activities or left in its natural state if this will fulfill the screening objectives; and nonprofit libraries and museums open to the public.
- (2) Public recreational uses. Municipal recreation buildings, playgrounds, parks and reservations, provided that no buildings, parking area or grounds for picnicking or organized games or sports shall be located within the specified distance of any lot line, subject to the same regulations as for educational uses.
- (3) Private recreational uses. Outdoor and indoor recreational uses, including but not limited to golf, badminton, tennis, paddle tennis, bathing, swimming and boating, with appurtenant clubhouses, except those where a chief activity is carried on primarily for gain, provided:
  - (a) A minimum site of 7.5 acres shall be provided.
  - (b) The floor-area-to-lot-area ratio shall not exceed that permitted for a single-family residence in the district in which it is located, except that in an R1 Residential Zoning District 0.10 shall be the maximum permitted.
  - (c) Fifty percent of any such site shall be natural ground cover, to include but not be limited to grass, trees, shrubs and plants.
  - (d) No green or fairway shall be located within 1/2 the specified distance from any lot line.

- (e) Any building, parking lot or other recreational use shall be subject to the same regulations as specified for educational uses.

[Amended 10-4-1961 by Ord. No. 13-1961; 10-18-1972 by Ord. No. 4-1972]

- (4) **Extension of welfare uses.** Extension of home for the aged, religious institutions and public health research institutions operated by nonprofit corporations organized under the laws of this state, in existence on or for which a permit was authorized before January 1, 1958. Any building or structure in connection with such use shall not be located less than twice the specified distance from any lot line, subject to the same regulations as for educational uses. The Planning Commission shall determine on-site parking requirements based on good standard practice for the size and type of activity.

[Amended 6-16-1993 by L.L. No. 4-1993]

- (5) Public uses. Federal, state, county or municipal buildings or uses, except any such use as is customarily conducted as a gainful business.
- (6) Nursery schools. Duly licensed nursery schools for not to exceed 30 children, provided that at least 1,000 square feet of outdoor play area for each five children or fraction thereof is provided, located on the premises at such a distance and so screened from any lot line and from any residential structure on an adjoining lot as to avoid a noise nuisance.
- (7) Agricultural uses. Nurseries, truck gardens, greenhouses and similar agricultural uses, provided that no greenhouse or other accessory building shall be located within the specified distance of any side or rear lot line and that there shall be no sale of products not growing or grown on the premises and not more than one unilluminated sign not over six square feet in area located behind the required front yard line.
- (8) Railroad passenger stations and electric substations for local service only.
- (9) Temporary real estate sales office in connection with a subdivision containing 10 or more lots, located only on part of the property being or to be subdivided. Any such structure shall be removed six months after either the last lot in the subdivision shall have been sold or all required improvements shall have been completed whichever is earlier.
- (10) Religious headquarters offices. In R-1 and R-2 Districts only, headquarters offices of religious organizations on sites of 20 acres or more, provided there shall not be more than five employees per acre nor more than an equal number of visitors, provided that not more than 10% of the lot shall be covered by buildings or otherwise used as headquarters offices of religious organizations, and provided that no building or parking area shall be located within the specified distance of any lot line, except that the Planning Commission may permit the limited use of existing buildings within the specified distance of any lot line if such limited use will have no material adverse effect on adjoining property.
- (11) Parking lot or parking garage. In RT Districts as the sole or secondary use, the storage or parking of private passenger vehicles of residents of other lots, only when found by the Planning Commission to be essential to the public interest, as evidenced by pressing need for off-street parking facilities. Such parking lot or parking garage use may be permitted to provide satellite parking for nonconforming public commercial restaurants, subject to the same finding of essential need.
- [Amended 7-17-1985 by L.L. No. 5-1985]
- (12) Religious uses. Churches and other places of religious worship.
- (13) Residential care facility uses. A residential care facility licensed or supervised by an appropriate state or federal agency to provide resident services and twenty-four-hour supervision to 10 or fewer mentally, emotionally, physically or socially disabled persons or for persons in need of supervision or juvenile delinquents, provided that:
- [Added 10-4-1978 by Ord. No. 3-1978]
- (a) A minimum site of 0.5 acres shall be provided, with the following minimum yards: front yard, 35 feet; rear yard, 60 feet; side yard, 30 feet; and a total of two side yards, 80 feet. All other area, height and miscellaneous regulations shall be the same as required for a single-family residence in the district in which it is located.
- (b) Any building to be erected, converted or occupied shall maintain the appearance of a single-family residence when located in a residence district and in any district shall be compatible with the existing architectural character of the area.
- (c) The applicant has presented a set of regulations, which shall apply to all employees,

## Chapter 197. Zoning

### Article IV. Use Regulations

#### § 197-10. Uses permitted subject to additional standards and requirements.

[Amended 7-17-1957; 7-20-1960]

A. The uses indicated in Column 2 of the Table of Regulations made a part hereof, entitled "Uses Permitted Subject to Additional Standards and Requirements," are permitted as follows: Upon receipt of an application for any such use by the Building Inspector, he shall refer such application to the Planning Commission of the City at its next regular meeting. The Planning Commission, after public notice and hearing, shall within 90 days thereafter file with the Building Inspector a report on such application so referred to it. The Planning Commission shall, in each such case, give consideration and effect to the objectives set forth in Subdivisions 24 and 25 of § 20 of the General City Law, and it shall give consideration to and make findings as to whether the following conditions prevail:

- (1) In a residence district the proposed use will serve a community need or convenience.
- (2) The proposed use will be appropriate in the proposed location and will have no material adverse effect on existing or prospective conforming development, and the proposed site is adequate in size for the use.
- (3) In cases where conversion is proposed of a structure designed and built originally for other uses, the structure will be adaptable.
- (4) The proposed use will be provided with adequate off-street parking to meet its needs, properly screened from adjoining residential uses, and entrance and exit drives are to be laid out to minimize traffic hazards and nuisance.
- (5) The potential generation of traffic will be within the reasonable capacity of the existing or planned streets and highways providing access to the site.
- (6) There are available adequate and proper public or private facilities for the treatment, removal or discharge of sewage, refuse or other effluent that may be caused or created by or as a result of the use.
- (7) In a Coastal Zone District, a conventional subdivision or a subdivision lot grouped pursuant to § **197-39** will accomplish the following:  
[Added 6-19-1991 by L.L. No. 13-1991]
  - (a) All wetlands and floodplains shall be preserved.
  - (b) All buildings and facilities shall be so arranged as to preserve to the maximum extent practical, the view of the shoreline from public streets.
  - (c) Where any development borders the waterfront there shall be a one-hundred-foot-wide strip of land along the waterfront which shall not include any area of the site below mean sea level or beyond the upland property line, whichever is most protective of proper drainage, flood protection and edge effect along the waterfront.

- B. The Commission, in its report, shall also recommend in appropriate instances whether the maximum size of the establishment in the number of employees, square feet of floor space, number and size of dwelling units or other appropriate measure should be limited, and also the extent of any such limitation required in order to limit the potential generation of traffic, to limit the impact upon the community of other consequences of the establishment of such a use and to minimize potentially adverse effects.  
[Amended 5-7-1969 by Ord. No. 1-1969]
- C. Upon receipt by the Building Inspector of such report of the Planning Commission showing that said conditions in Subsection **A(1) to (6)** inclusive prevail, as well as its recommendations as to appropriate conditions and safeguards, and upon compliance by the applicant with the applicable standards and requirements set forth in said Table of Regulations and in §§ **197-11, 197-12 and 197-84** hereof and the provisions of the Building Code of the City<sup>[1]</sup> and the provisions of any other applicable laws and ordinances, the applicant shall, upon the payment of any fee prescribed therefor, be entitled to a building permit or certificate of compliance, as the case may be, from the Building Inspector, subject to the recommended conditions and safeguards. In the event that the Planning Commission shall not make a finding that any of the above-enumerated conditions in Subsection **A(1) to (6)** inclusive prevail, the Building Inspector shall refuse to issue a building permit or certificate of compliance, as the case requires.
- [1] *Editor's Note: See Ch. 68, Building Construction.*
- D. If the Building Inspector, after considering the report and recommendations of the Planning Commission, issues the permit applied for or if he refuses to issue such permit, then in either of such cases any person aggrieved by such determination and action of the Building Inspector in issuing or refusing to issue such permit may take an appeal from the Building Inspector's decision and action to the Board of Appeals as provided in § **197-81** within such period of time as is prescribed by such Board by general rule and as provided in § 81 of the General City Law. Said Board is hereby authorized and empowered in such cases to hear and fully decide and dispose of such matter with the same force and effect as if this chapter required it in the first instance to pass upon and approve or disapprove any such application under this section. Said Board of Appeals, in making its decision, may adopt, modify or reject any of the findings of the Planning Commission and may make new and/or additional findings. Such Board may reverse or affirm, wholly or partly, or may modify the decision and action of the Building Inspector appealed from.

ZONING

197 Attachment 1

City of Rye  
Table A: Residence Districts

Area, Yard, Height and Miscellaneous Regulations

[Amended 4-17-1957; 7-17-1957; 7-20-1960; 3-21-1962 by Ord. No. 2-1962; 10-24-1963 by Ord. No. 7-1963; 11-15-1967 by Ord. No. 4-1967; 6-18-1968 by Ord. No. 3-1968; 10-18-1972 by Ord. No. 4-1972; 11-18-1981 by L.L. No. 9-1981; 4-12-1982 by Ord. No. 2-1982; 6-15-1983 by L.L. No. 4-1983; 6-15-1983 by L.L. No. 5-1983; 11-21-1984 by Ord. No. 1-1984; 2-3-1988 by L.L. No. 2-19-1988; 7-16-2003 by L.L. No. 6-2003<sup>1</sup>; 12-2-2015 by L.L. No. 1-2016]

4	5	6	7	8	9	10	11	12	13	14	15	16	
District	Use	Maximum Ratio of Floor Area to Lot Area (j)	Minimum Size of Lot (acres or sq. ft.) per: a. Family or Equiv. (a) or b. Nonresidential Use	Minimum Width (feet) [See § 197-36]	Minimum Yard Dimensions (feet)				Specified Distance (feet) as Required in Column 2	Maximum Height		One-Story Accessory Structures	
					Front [See (b)]	One Side [See (b) and (c)]	Total of Two Side Yards	Rear [See (b)]		(stories)	(feet)	Maximum Coverage of Required Rear Yard	Minimum Distance to Side Line (feet)
R-1		0.15	1 acre	150	35	20	50	60	100	2½	32	20%	20
R-2		0.20	½ acre	115	35	15	40	50	80	2½	32	20%	15
R-3	Area of special flood hazard	0.25	½ acre	100	30	12	30	40	70	2½	28	35%	10
	All other areas	0.25	1/3 acre	100	30	12	30	40	70	2½	28	35%	10
R-4	Area of special flood hazard	0.30	½ acre	85	30	10	25	30	60	2½	28	25%	10
	All other areas	0.30	10,000	85	30	10	25	30	60	2½	28	25%	10
R-5	Area of special flood hazard	0.35	½ acre	75	30	8	20	30	50	2½	28	30%	5
	All other areas	0.35	7,000	75	30	8	20	30	50	2½	28	30%	5
R-6	Area of special flood hazard	0.40	½ acre	60	25	8	20	25	40	2½	28	30%	5
	All other areas	0.40	6,000	60	25	8	20	25	40	2½	28	30%	5
RS	Single-family house	0.40	½ acre	100	30	12	30	40	—	2½	28	25%	10
	Other permitted use	0.40	1/3 acre	100	50	½ height, minimum 12	40	40	—	2½	35	10%	12
RT	Single-family house	0.45	5,000	50	25	8	20	30	40	2½	28	30%	5
	Two-family house	0.45	3,000	60	25	8	20	30	—	2½	28	30%	5
RA-1	Single-family house	0.40	5,000	50	25	8	20	30	40	2½	35	30%	5
	Two-family house	0.40	5,000	60	25	8	20	30	—	2½	35	30%	5
	Apartment house	0.40	5,000 (e)	100	70	50	100	50	—	2½	35	30%	10
RA-2	Single-family house	0.45	5,000	50	25	8	20	30	30	2½	35	30%	5
	Two-family house	0.45	3,500	60	25	8	20	30	—	2½	35	30%	5
	Apartment house	0.45	3,500 (e)	100	25	20	50	40	—	2½	35	30%	10
RA-3	Single-family house	0.50	5,000	50	25	8	20	30	20	2½	35	35%	5
	Two-family house	0.50	3,000	60	25	8	20	30	—	2½	35	35%	5
	Apartment house	0.50	2,500(e)	80	25	20	40	40	—	2½	40	35%	10
RA-4	Single-family house	0.50	5,000	50	25	8	20	30	—	2½	35	35%	5
	Two-family house	0.50	3,000	60	25	8	20	30	—	2½	35	35%	5
	Apartment house	0.50	2,500(e)	80	25	20 (d)	40 (d)	40 (d)	—	2½ (f)	35 (f)	35%	10
RA-5	Apartments for senior citizens and handicapped persons	1.00	1 acre	80	25		40		—	4	50	35%	10

<sup>1</sup> Editor's Note: This local law also stated that it would not apply if a building permit application or Zoning Board of appeals application had been received by the City prior to 7-3-2003.

RYE CODE

4	5	6	7	8				11	12	13	14	15		16		
				Minimum Yard Dimensions (feet)								Specified Distance (feet) as Required in Column 2	Maximum Height		One-Story Accessory Structures	
				Front [See (b)]	One Side [See (b) and (c)]	Total of Two Side Yards	Rear [See (b)]						(stories)	(feet)	Maximum Coverage of Required Rear Yard	Minimum Distance to Side Line (feet)
District	Use	Maximum Ratio of Floor Area to Lot Area (j)	Minimum Size of Lot (acres or sq. ft.) per: a. Family or Equiv. (a) or b. Nonresidential Use	Minimum Width (feet) [See § 197-36]	Front [See (b)]	One Side [See (b) and (c)]	Total of Two Side Yards	Rear [See (b)]	Specified Distance (feet) as Required in Column 2	(stories)	(feet)	Maximum Coverage of Required Rear Yard	Minimum Distance to Side Line (feet)			
RA-6	Apartments for active senior citizens	0.75	2,500	400	150 <sup>(k)</sup>	50	100	50	—	4	45	35%	10			
RFP	Single-family house Two-family house Apartment house (g)	(g)	10 acres (g)	250	85	(g)	(g)	(g)	—	2½	35	—	—			
LPD-A	(h)	0.15	22 acres	(h)	(h)	(h)	(h)	(h)	—	(h)	(h)	(h)	(h)			

Notes:

- (a) Equivalent to one family in computing minimum lot sizes.
  - [1] Hotels and lodging houses, each two guest sleeping rooms.
  - [2] Hospitals and similar institutions, each two hospital beds.
  - [3] Medical offices, each two doctors plus three other employees.
  - [4] Other nonresidential main uses not specifically provided for in this Table of Regulations or elsewhere in this chapter, each 1,500 square feet of floor space.
- (b) [1] Wherever a required yard abuts a street less than 50 feet in width, the minimum yard dimension(s) shall be measured from a line of 25 feet from and parallel to the center line of said street.  
 [2] No building shall be nearer than 100 feet to center line of Post Road between Mamaroneck Town line and Central Avenue.
- (c) For corner lots, corner side yards at least 1/5 of the lot width at the location of the building, but need not be more than front yard minimum, except as provided in § 197-62. Permitted nonresidential main uses shall have minimum side yard 1½ times width specified for a single-family house. (See § 197-52.)
- (d) Twenty-five feet for any side yard containing a driveway serving more than six parking spaces. For a one-, two- or three-family structure existing on the effective date of the chapter (August 9, 1956) and proposed for conversion for up to four (4) families, the Board of Appeals may reduce side yard requirement to eight feet. For side yard requirements for other apartments, see § 197-54. For spacing between buildings on the same lot, see § 197-70. For the rear and side yards of apartment houses adjoining the right-of-way of a railroad, a parkway or a limited access highway, see § 197-64.
- (e) For usable open space requirement, see § 197-68.
- (f) For buildings in variable-height apartment groups (a use permitted in RA-4 Districts subject to additional standards and requirements), see § 197-13.
- (g) See § 197-13.1 for requirements and additional comments.
- (h) See § 197-13.2 for requirements and additional procedures.
- (i) These requirements shall not apply to existing or future lots, provided that the lot is not substantially located in an area of special flood hazard, or to any lot in a subdivision which received tentative approval of a preliminary layout, pursuant to Chapter 170 of this Code, prior to February 17, 1988, that conforms to the requirements for a lot not located in an area of special flood hazard. For the purpose of this exemption, an existing or proposed lot having 90% or more of its area located outside of an area of special flood hazard shall not be considered to be substantially located in an area of special floor hazard. See § 197-37.1 for additional exemptions.
- (j) See § 197-43.1 for floor area ratio reductions for single-family residences on oversized properties in one-family districts.
- (k) The required front yard setback can be reduced to no less than 100 feet, provided that the maximum permitted area of the encroachment of the structure into this reduced setback shall be less than 15% of the total area between the front yard line and the standard 150-foot setback.

## **B. 1993 Declaration of Covenants and Restrictions**

As a condition of the City of Rye Planning Commission's grant of site plan approval for certain building and site improvements in 1993, The Osborn was required to and did execute a "Declaration of Covenants and Restrictions" on October 15, 1993 (1993 Declaration; see Exhibit V.1-2. The 1993 Declaration set forth certain dimensional requirements applicable to that site plan approval and future use of the property:

- Minimum lot area for the Osborn Home – 50 acres
- Maximum floor area ratio (FAR) - .30
- Minimum new building\* setback from property line – 160 feet
- Maximum new building\* height – 5 stories, 75 feet
- Maximum building coverage – 15%
- Maximum site coverage – 30%
- None of the above Covenants and Restrictions were to "prohibit the continued existence, location or use of existing buildings at the Osborn Home."

\* "constructed after July 1<sup>st</sup>, 1993"

The limitations set forth in these dimensional requirements generally reflected the development characteristics of the campus that would exist following the construction of the 1993-approved improvements. As there have been no additional buildings and limited sitework<sup>1</sup> constructed at The Osborn since the 1993 approvals, the 1993 Declaration limitations continue to reflect conditions on the Osborn campus today. See Comparative Zoning Table, Exhibit V.1-3, columns for "Existing Conditions" and "1993 Declaration."

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<sup>1</sup> Approximately 100 surface parking spaces were added to the campus per a 2013 Site Plan Amendment.

DLR P-6 T-36 SP 2190 F035

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION dated the 15th day of October, 1993 made by THE MIRIAM OSBORN MEMORIAL HOME ASSOCIATION having offices at 101 Theall Road, Rye, New York (hereinafter called the "Declarant") is intended to declare and set forth certain Covenants and Restrictions affecting the future development of the premises now owned by the Declarant and situated in the City of Rye, County of Westchester and State of New York and known and designated on the Tax Map as Sheet 146.13, Block 1, Lot 8 (hereinafter referred to as the "Osborn Home").

WHEREAS, the Planning Commission of the City of Rye (hereinafter called the "Planning Commission") has approved the Declarant's application for site plan approval and preliminary approval of a use permitted subject to additional standards and requirements by Resolution #11-93 which is dated June 22nd, 1993; and

WHEREAS, as a condition of approval, the Planning Commission has required, among other things, a Declaration of Covenants and Restrictions limiting the future development of the Osborn Home; and

WHEREAS, the Osborn Home is currently improved with buildings which violate the Covenants and Restrictions to be imposed upon the Property; and

WHEREAS, nothing herein is intended to prohibit the continued existence, location or use of existing buildings; and

WHEREAS, Declarant desires to impose upon the aforementioned Osborn Home certain Covenants and Restrictions.

NOW, THEREFORE, the Declarant does hereby adopt the following Covenants and Restrictions:

1. The minimum lot area required for the Osborn Home shall be fifty (50) acres.

2. The maximum floor area ratio shall be .30.

3. No buildings constructed after July 1st, 1993, shall be located closer than 160 feet to the Property line in existence on said date. This restriction shall not apply to existing parking areas or existing and future roadways, walkways, stormwater control basins, gatehouses and card activated gates at access drives, light fixtures, signs or similar types of improvements.

4. No building constructed after July 1st, 1993, shall exceed five (5) stories or seventy-five (75) feet in height with height being defined as the vertical distance from the average grade at the perimeter building line to the midpoint of the roof. Building height as used herein shall mean: the vertical distance from the average established grade in front of the lot, or from the average natural grade at the building line, if higher, to the average height of the top of the

cornice of a flat roof, or to the top of a mansard roof, or to the midheight of the highest gable or dormer in a pitched or hipped roof, or if there are no gables or dormers, to the midheight of such pitched, hipped or mansard roof.

5. The maximum percentage of building coverage shall be fifteen (15%) percent.

6. The maximum percentage of site coverage shall be thirty (30%) percent.

7. None of the Covenants and Restrictions contained herein shall prohibit the continued existence, location or use of existing buildings at the Osborn Home.

8. All of the foregoing Covenants and Restrictions shall be deemed to have been imposed in favor of the City of Rye. The City of Rye may prosecute any proceedings at law or in equity against any person or persons violating or attempting to violate said Covenants and Restrictions either to prevent such violation or to recover damages therefore.

9. Invalidation of any of the Covenants or Restrictions by judgment or court order shall in no way affect any of the provisions which shall remain in full force and effect.

10. This Declaration shall run with the land and be enforceable by the City of Rye.

11. This Declaration may not be amended or modified without the prior written approval of the City of Rye.

IN WITNESS WHEREOF, Declarant has duly executed this Declaration by his hand and seal affixed hereto the day and year first above written.

STATE OF NEW YORK, COUNTY OF

ss:

On the 15<sup>th</sup> day of OCTOBER 1993, before me personally came Robert W. PRATT to me known, who, being by me duly sworn, did depose and say that he resides at No. 16 Packard Ct., Rye, NY; that he is the President of the Board of Trustees of [redacted], the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

THE MIRIAM OSBORN MEMORIAL HOME ASSOCIATION

BY: Robert W. Pratt

ANN MARGRET BERNARDONE  
Notary Public, State of New York  
No. 5001147  
Qualified in Westchester County  
Commission Expires August 31, 1994

*Ann Margret Bernardone*  
10/15/93

L & H ABSTRACT CORPORATION  
188 East Pratt Road  
White Plains, N. York 10601

*R-R McCullough, Goldberger  
550 Mamaroneck Ave.  
Harrison, NY 10528*

*Sheet 146.13  
Block 1  
Lot 8  
West. Co.*

### C. Proposed Local Law Components

The creation of a new Senior Living Facilities use within the R-2 District will serve to better guide future change at The Osborn while protecting the interested of neighboring properties and the City of Rye.

To facilitate these goals The Osborn is proposing per its petition to create a “Senior Living Facilities” use within the R-2 District. Some of the dimensional requirements in the 1993 Declaration have been maintained, while others are proposed to be changed – all have been developed in consideration of the existing zoning of the site and surrounding properties (R-2 and other R- districts, B-4, RA-6), the 1993 Declaration, preliminary meetings and discussions with City boards and staff, and considerations of The Osborn as described in this petition. See V.1-3, Comparative Zoning Table, and V.1-4 Proposed R-2 SLF Zoning Diagram.

The proposed dimensional requirements for the R-2 Senior Living Facilities use include:

- Minimum lot area – 50 acres
- Maximum floor area ratio (FAR) – .45
- Minimum required yards for new buildings
  - Adjoining or across the street from a single-family residence or school – 160 feet, with landscape buffer requirements
  - Across a non-County, State or federally-designated road from a one-family district – 240 feet
  - Adjoining or across the street from other than a single-family residence or school – 160 feet, except that the required setback can be reduced to no less than 100 feet, provided that the maximum permitted area of the encroachment of the structure into this reduced setback shall be less than 30% of the total area between each yard line and the standard 160-foot setback
- Maximum new building height – 4 stories, 60 feet. Where proposed buildings are set back a minimum of 200 feet from a boundary line and can be wholly located within an area of said setback that can contain a horizontal square with 200-foot sides, the permitted maximum height may be increased to 5 stories, 75 feet.
- Maximum building coverage – 15%
- Maximum site coverage – 35%
- As per the 1993 Declaration, none of the R-2 Senior Living Facilities requirements are proposed to “prohibit the continued existence, location or use of existing buildings at the Osborn Home

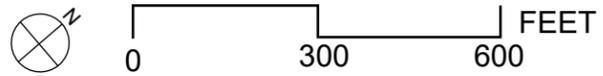
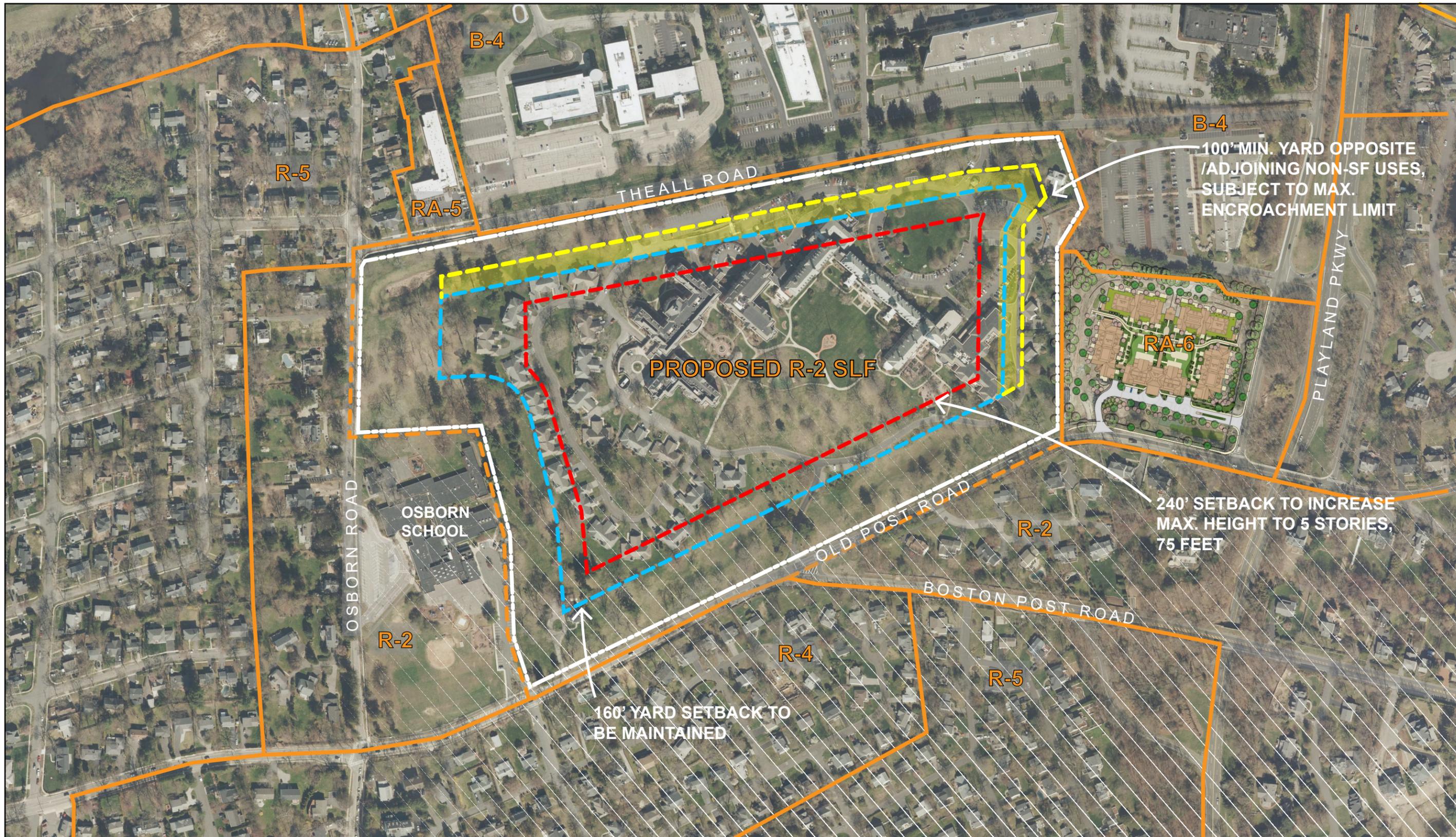
The R-2 Senior Living requirements would alter those of the 1993 Declaration by:

- (1) **Increasing the permitted FAR from .3 to .45 while maintaining the permitted building coverage at 15%**, which would allow for increased Osborn building area without changing the permitted extent of building footprint on the

Zoning Text Amendment Petition  
R-2 Senior Living Use

- site, thereby encouraging multi-story rather than one- or two-story buildings.
- (2) **Refining the minimum yard requirements to reflect:**
    - (a) The addition of a landscape buffer provision to reflect and maintain the importance of The Osborn perimeter landscape plantings;
    - (b) An increase in the minimum yard where The Osborn borders a local residential street; and
    - (c) A limited reduction of the minimum yard where The Osborn adjoins or is across the street from a non-single-family use.
  - (3) **Increasing the permitted site impervious coverage from 30% to 35%**, which would allow for the addition of new Osborn site and circulation improvements; and
  - (4) **Reducing the permitted height at the minimum yard setback from five stories to four stories**, which would limit taller buildings to the center of the campus by requiring increased setbacks for the 5-story height permitted under the 1993 Declaration.

The Osborn						
Rye, New York						
<b>Comparative Zoning Table</b>						
<b>Zoning Standard</b>	<b>The Osborn - Existing Conditions</b>	<b>1993 Declaration</b>	<b>R-2 District</b>	<b>RA-6 District</b>	<b>Proposed Local Law (Nov. 2018)</b>	<b>Proposed Local Law (rev. Mar. 2020)</b>
Max FAR	0.26	0.3	0.2	0.75	0.5	0.45
Min. Lot Size	55.79 2,430,182	50 ac	.5 ac / family	2,500 sf / family	50 ac	50 ac
Min. Yards (ft)						(f)
Front	174 (a)	160	35	150 (d)	150 (e)	160 (g, h)
One side	161 (b)	160	15	50	50	160 (g, h)
Two sides		-	40	100		
Rear	161 (c)	160	40	50	50	160 (g, h)
Max. Height						
Stories	5	5	2.5	4	5	4 / 5 (i)
Feet	64	75	32	45	60	60 / 75 (i)
Max. Building Coverage	11.53%	15%	-	35%	20%	15%
Max. Site Impervious Coverage	26.50%	30%	-	-	35%	35%
<b>Notes</b>						
(a) Pre-1993 building - 120 feet						
(b) Pre-1993 building - 53 feet						
(c) Pre-1993 building - 120 feet						
(d) Per §197 Table A, note (k), "The required front yard setback can be reduced to no less than 100 feet, provided that the maximum permitted area of the encroachment of the structure into this reduced setback shall be less than 15% of the total area between the front yard line and the standard 150' setback."						
(e) Proposed - Required front yard setbacks may be reduced to no less than 60 feet, provided that the maximum permitted area of the encroachment of the structure into this reduced setback shall be no more than 25% of the total area between the front yard line and the standard 150-foot setback. Notwithstanding the foregoing, for all new buildings and structures, a minimum setback of 150 feet shall be maintained from Old Boston Post Road.						
(f) Proposed - Where an R-2 Senior Living Facility adjoins or is located across the street from a single-family residence or school, the required yard shall be planted and maintained with appropriate landscaping so as to provide effective visual screening, shall contain no parking, storage or other program use, may contain stormwater management facilities, and shall be crossed only by sidewalks and access drives.						
(g) Proposed - Where an R-2 Senior Living Facility is located across a non-State, non-County, or non-federally-designated road from a one-family district, the minimum required setback from that road shall be 240 feet.						
(h) Proposed - Where an R-2 Senior Living Facility adjoins or is located across the street from other than a single-family residence or school, the required setback can be reduced to no less than 100 feet, provided that the maximum permitted area of the encroachment of the structure into this reduced setback shall be less than 30% of the total area between each yard line and the standard 160' setback.						
(i) Proposed - Where proposed buildings are set back a minimum of 240 feet from a boundary line and can be wholly located within an area of said setback that can contain a horizontal square with 200-foot sides, the permitted maximum height may be increased to 5 stories, 75 feet.						



#### **D. Rye Development Plan**

The City of Rye's Development Plan was adopted in 1985 (the "1985 Plan") as the City's goals and policies for land use within the City through to 2000.<sup>2</sup> The 1985 Plan notes that The Osborn is among the "large estates, historic structures, institutional uses" that together create a "special character" of the Post Road corridor in Rye and feature "stone fences and wooded areas that border much of its length in the City".

The 1985 Plan envisioned the Post Road corridor as a mixed-use area blending in with surrounding residential areas, where "permitted uses would be a variety of residential uses and densities, institutional uses serving the community (schools, churches, etc.), museums, and uses of similar character."

Relevant to the future of The Osborn, recommendations such as "the density of residential development would be in the low-medium density range and regulated by performance standards", aligns with the proposed dimensional requirements that have been developed with sensitivity to existing zoning of the site and surrounding properties. The goals of this proposed zoning text amendment are also consistent with the stated aims of land use policy for this district in fostering the preservation of the unique features of the Post Road corridor, ensuring consideration with historic and aesthetic resources, and compatibility with adjacent uses and infrastructure capacity.

The clustering of development is also promoted as an approach that is particularly effective in maintaining the specific features of large properties including historic buildings, wooded buffers and scenic vistas that give the road its character.<sup>3</sup>

#### **E. Westchester 2025**

A web-based update of the County-wide comprehensive policies, *Westchester 2025* builds upon *Patterns for Westchester's Policies for 2000 and Beyond*<sup>4</sup> Westchester 2025's "Context for County and Municipal Planning and Policies to Guide County Planning," adopted in 2008 and amended in 2010 (the "2025 Plan"), replaces and updates the "Assumptions and Policies" section of *Patterns for Westchester* and presents a series of subject areas (2025 Plan p. 2) which provide the basis for Westchester 2025's policies and strategies.

The goals of the proposed zoning text amendment are consistent with the strategic aims of the County's long-range plan in the following subject areas:

Strategy 7 – The overall population of Westchester County is expected to grow only modestly through the year 2025 but the composition will continue to diversify. The increasing number of elderly residents will influence the

---

<sup>2</sup> *City of Rye 1985 Development Plan*. City of Rye Planning Commission, p14.

<sup>3</sup> *Ibid.* p15-16

<sup>4</sup> *Westchester 2025 Context for County and Municipal Planning in Westchester County and Policies to Guide County Planning*. 2008, amended 2010. Westchester County Planning Board, p1-4

Zoning Text Amendment Petition  
R-2 Senior Living Use

nature and direction of public services, require thoughtful site design and force a broadening of business and cultural opportunities.

Strategy 8 – A varied supply of all types of housing, at all reasonable locations, is necessary for a healthy county. Communities must create more “livable” neighborhoods for our aging population that feature transit-oriented development.

*Westchester 2025* goes beyond subject considerations by putting forward Policy recommendations for the next decade. Specifically related to locating future development, the County’s long-range plan indicates that the “future of development in Westchester will be found in redevelopment of residential, commercial and industrial space with most new construction located in the county’s downtowns in the largest cities and village centers, especially those with access to a rail station.”<sup>5</sup> Certain policies in alignment with the proposed zoning amendment and future improvements at The Osborn, include:

Policy 1 – Channel development whenever possible to centers where infrastructure can support growth, where public transportation can be provided efficiently and where redevelopment can enhance economic vitality. Development should be consistent with defined community character and be designed to facilitate or enhance a smart growth urban fabric.”

The Osborn, located 1.5 miles from the central business district of Rye, one mile from downtown Harrison and the Metro North New Haven line station and within a quarter mile of the Bee Line Bus stops along Theodore Fremd Avenue, is strategically positioned to expand in a manner congruous with these goals and recommendations.

Other considerations harmonious with the proposed zoning amendment include codifying contextual zoning and design standards.<sup>6</sup>

Policy 13 – Encourage efforts to define the desired character of each municipality and neighborhoods within the broader, diverse palate of Westchester County. Support initiatives to adapt and establish land use policies and regulations that enhance that character through focus on location, setting, aesthetic design and scale of development as well as the public context of street life, tree canopy and utility placement.

The proposed zoning amendment corresponds to the intent of certain *Westchester 2025* policies, providing The Osborn with the flexibility to meet the needs of current and future residents, and undertake future improvements in a nature that is considerate to the contextual elements of surrounding uses.

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<sup>5</sup> Ibid p7.

<sup>6</sup> Ibid p9.

# THE OSBORN

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## V.2. SITE FEATURES

## A. Trees

As noted in “Supporting the Legacy of The Osborn Trees” (see Exhibit V.2-0), trees have always been integral elements of the Osborn campus plan:

*At the beginning of the last century, our Co-Founder, John Sterling, envisioned a landscape plan that reflected the sensibility of famed landscape architect B. S. Olmstead. Modeled on the “pleasure grounds” of England, it features a winding carriage drive, open lawns and shaded walks... Special care was devoted to planting “specimen” trees of exceptional beauty, many remain to the delight of those who visit the campus in every season.*

A 1947 aerial photo from the Westchester County Planning Department archives shows the original Sterling-Osborn-Strathcona buildings set within an expansive lawn dotted with trees. See Exhibit V.2-1. The mid-1990’s Osborn improvements included rose and perennial gardens located near the assisted living and Pavilion wings, a fountain and gardens in the Sterling Park courtyard, and supplemental tree plantings across the campus. See Exhibit V.2-2, 2003 Osborn Walking Tour Map.

The Osborn continues to view its trees as a valuable resource for its residents, staff and visitors. In 2019, The Osborn engaged with a tree service and arborist to provide an inventory assessment of all existing trees on the campus.

The inventory and assessment followed ANSI A300 Level 2 visual assessment standards for all trees on the property. Field data collection occurred in early July and August 2019. A total of 1,021 trees were inventoried on the campus comprised of 116 distinct species, which in the arborist’s view represented a diverse, well-managed and established population of urban plantings. The data points collected for each tree captured more than ten attributes and characteristics, including species information, health and size, geo-spatial location data, plant health care recommendations, photos and memorial status. An map of the trees was compiled by the arborist and is reproduced as Exhibit V.2-3<sup>1</sup>.

The assessment prioritized trees needing immediate attention, which was undertaken by The Osborn beginning in the fall of 2019. Subsequently the campus was divided into four quadrants for future maintenance activities, which will be carried out on a cycling annual basis by a local tree service under the direction of an arborist.

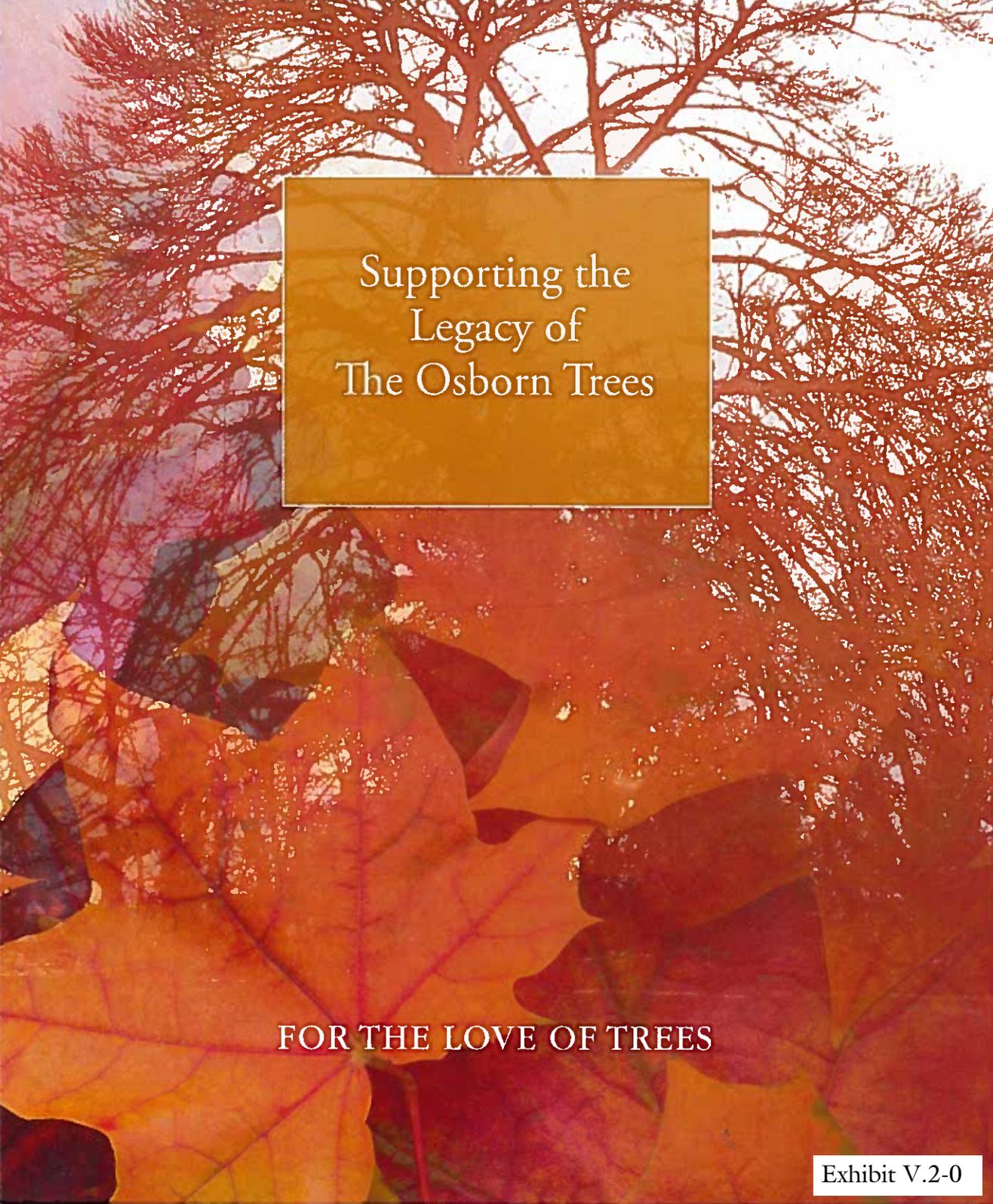
To further celebrate the importance of the campus’s tree resources, in 2019 The Osborn made application for and was awarded Level 1 Arboretum status by ArbNet, an “online, interactive community of arboreta that supports the common purposes and interests of tree-focused public gardens.” (arbnet.org; see Exhibit V.2-4) Criteria for Level 1 designation include an arboretum plan, organizational group, collection of trees with a minimum of 25 species, support staff or volunteers, and a public dimension that includes public access and at least one annual event focused on trees or arboretum purposes.

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<sup>1</sup> The Osborn Tree Assessment, SavATree Consulting Group, August 26, 2019, p1.

Zoning Text Amendment Petition  
R-2 Senior Living Use

The Osborn anticipates that all future campus planning will include management and planting of trees as integral to maintaining the character of its campus.



Supporting the  
Legacy of  
The Osborn Trees

FOR THE LOVE OF TREES



**A**t the beginning of the last century, our Co-Founder, John Sterling, envisioned a landscape plan that reflected the sensibility of famed landscape architect B. S. Olmstead. Modeled on the “pleasure grounds” of England, it features a winding carriage drive, open lawns and shaded walks. Sterling’s intention was to plant at least one tree of each variety suitable for the climate. In all, 2,258 trees were planted under his watch, some from seeds brought by European laborers. Special care was devoted to planting “specimen” trees of exceptional beauty, many remain to the delight of those who visit the campus in every season.

Over a hundred years have passed since then and our trees continue to inspire us. The benefits of spending time in nature are widely known to promote health and a sense of well-being. The beautiful trees of The Osborn are a unique and enduring treasure that enrich the lives of all who live and work here.

## PLAN

Thanks to two generous gifts, The Osborn commissioned a professional inventory of existing trees and created a preliminary plan for the future. There are over a thousand trees across our 56-acre campus, representing 116 different species, and varying stages of growth. Over 90% of our trees are in fair or good condition, and now we have a plan for the future.

Our goals are:

### **Safety**

Removal of trees that pose a risk to residents and property.

### **Health**

Care including pruning, support, disease control, and fertilization.

### **Education**

Label trees and share maps, offer campus tours to support learning.

### **Growth**

Planting to achieve the appropriate balance and diversity of species.



## SUPPORT

Trees are living organisms subject to age-related decline and damage from weather. The long-term health of our tree population depends on the establishment of an endowed fund that will provide regular income to support the care and growth of The Osborn Trees – today and well into the future.

## GROW

You can help us protect this valuable resource and prepare for the future by making a gift or pledge to The Osborn Tree Fund. Individual donations, gifts In Honor of/In Memory of a loved one, multi-year pledges, gifts of equities or other financial tools, IRAs or insurance policies can be used to support the Legacy of The Osborn Trees. For more information, contact Jennifer Christensen (914-925-8372) or [jchristensen@theosborn.org](mailto:jchristensen@theosborn.org).

### AT A GLANCE

-  56 acres
-  1021 trees
-  116 species
-  Oldest tree: Copper beech near Pavilion
-  Newest tree: Japanese Stewartia near Memorial Walkway
-  Largest tree: Linden near main entrance. (73" in diameter)
-  Most common tree: Norway Spruce (82)

### DID YOU KNOW

- Two large trees can provide a day's supply of oxygen for up to four people.
- One tree can absorb as much carbon in a year as a car produces while driving 26,000 miles.
- Trees provide a valuable habitat for 400+ birds as well as other wildlife in the region.
- Shade offers natural air conditioning; roots absorb water to help reduce flooding.

To view an interactive map of  
The Osborn Trees,  
visit: <http://arcg.is/181Pyb>  
For best results, use Google Chrome  
as your browser.

The Osborn Foundation  
101 Theall Road, Rye, NY 10580  
[www.theosborn.org/donate/online](http://www.theosborn.org/donate/online)  
Jennifer Christensen (914) 925-8372  
[jchristensen@theosborn.org](mailto:jchristensen@theosborn.org)

The Osborn Foundation is a 501(c)(3) not-for-profit  
charitable organization. Tax ID 47-4600655



THE OSBORN FOUNDATION





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AERIAL SOURCE: <https://giswww.westchestergov.com/HistoricalAerial/>

1947 AERIAL PHOTOGRAPH

THE OSBORN  
RYE, NEW YORK

EXHIBIT  
V.2-1

## LEGEND

- 1 Main Entry Gate
- 2 North Lawn
- 3 Sterling Park & Sterling Home Care
- 4 Skilled Nursing
- 5 Sales Information Office
- 6 Betty Nagel Perennial Garden (BNPG)
- 7 South Lawn
- 8 Arboretum
- 9 Putting Green
- 10 Post Road Entrance
- 11 Garden Homes
- 12 Sterling Park Apartments
- 13 Fountain Courtyard
- 14 Berm
- 15 Theall Road Entrance
- 16 Administration

## TOUR KEY

- South Lawn Loop..... 1/5 mile
- Arboretum Tour..... 1/3 mile
- Garden Tour ..... 1/2 mile
- Osborn Loop ..... 3/4 mile
- Campus Tour ..... 1 mile
- \* Distance Marker



The Osborn

## WALKING TOUR MAP

of the

THE OSBORN RETIREMENT COMMUNITY

101 THEALL ROAD, RYE, NEW YORK 10580

Exhibit V.2-2

© Divney Tung Schwaibe, LLP 2003



Sav-A-Tree Inventory 2019

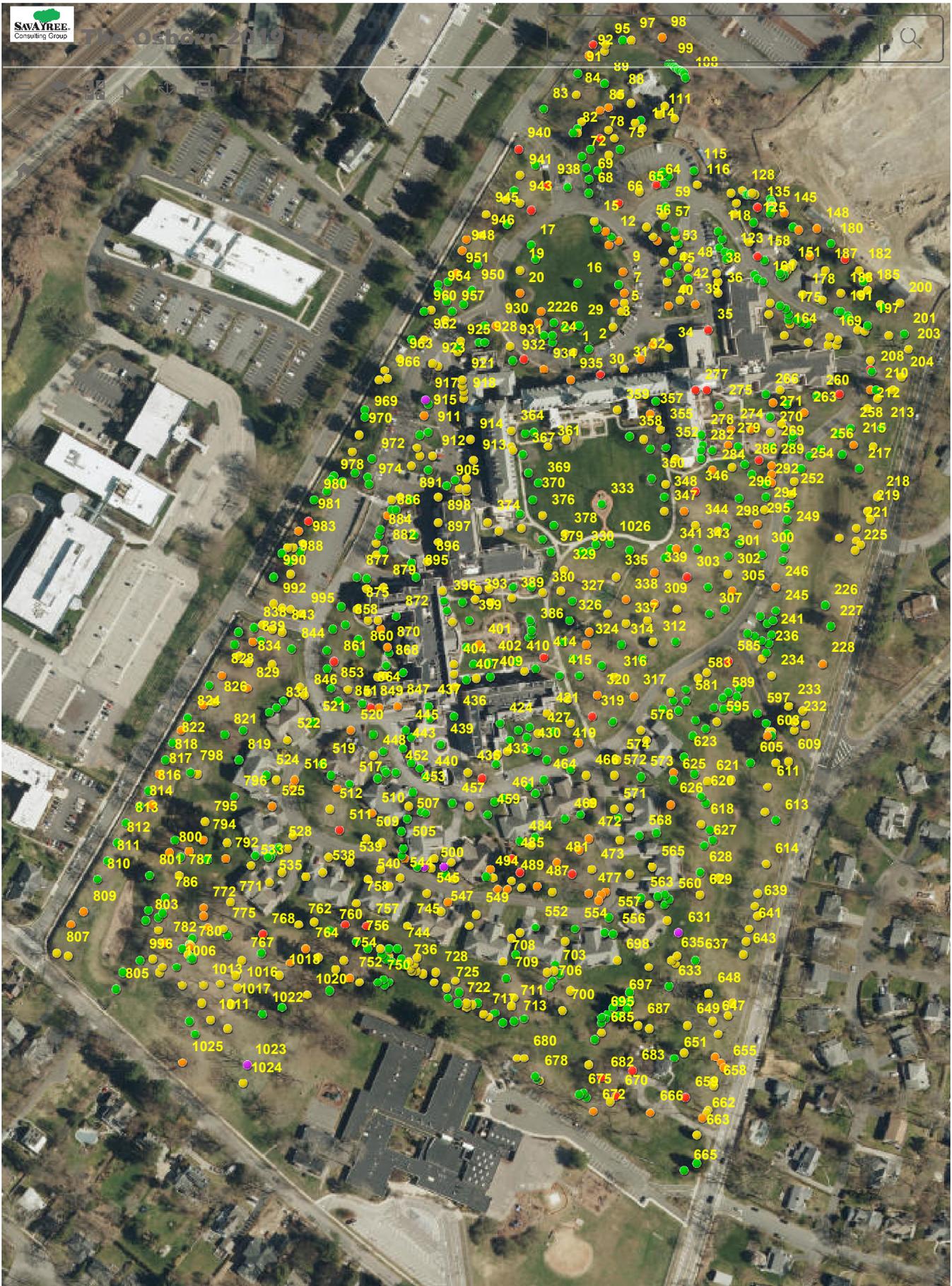


Exhibit V.2-3



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[HOME](#) > [THE MIRIAM OSBORN MEMORIAL ARBORETUM](#)

## The Miriam Osborn Memorial Arboretum



### THE MIRIAM OSBORN MEMORIAL ARBORETUM

#### DESCRIPTION



ADDRESS

101 Theall Road, Rye, New York 10580, United States,  
0.000000 0.000000

TELEPHONE

914-925-8322

E-MAIL ADDRESS

cferreri@theosborn.org

WEBSITE ADDRESS

<http://www.theosborn.org>

ACCREDITED ARBORETA

LEVEL I ACCREDITED ARBORETA

LEVEL II ACCREDITED ARBORETA

LEVEL III ACCREDITED ARBORETA

LEVEL IV ACCREDITED ARBORETA

VIEW ALL ACCREDITED ARBORETA

ACCREDITATION CRITERIA

APPLY FOR ACCREDITATION

LEVELS OF ACCREDITATION

LEVEL I CRITERIA

LEVEL II CRITERIA

LEVEL III CRITERIA

LEVEL IV CRITERIA

ACCREDITED ARBORETA

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Complete your online application and be recognized for achievement of specified levels of professional practice.

LEARN MORE

Exhibit V.2-4

# LEVEL I CRITERIA

The most basic level of accreditation requires achievement of the following standards:

- **An arboretum plan** documentation of some sort, such as an organizational plan, strategic plan, master plan, or other, that defines the purpose of the arboretum, its audience(s), the types of plants that are to be grown to achieve that purpose and serve those audiences, provisions for the maintenance and care of the plants, and provisions for the continuing operation of the organization through time with a clear succession plan.
- **An arboretum organizational group** of people or governing board or authority that is dedicated to the arboretum plan and its continuation beyond the efforts of a single individual. Such an organizational group can affirm fulfillment of standards and authorize participation as an accredited arboretum.
- **An arboretum collection** with a minimum number of 25 species, varieties or cultivars of trees or woody plants that have been planted and are growing in accordance with the arboretum plan. Plants in the arboretum collection must be labeled in some way as to identify them taxonomically, including scientific name and cultivar if applicable, and documented in some way so that information on their acquisition (source or origin, date of acquisition, etc.) is available for access.
- **Arboretum staff or volunteers** who ensure fulfillment of the arboretum plan and provide for the basic needs of the arboretum collection and functions of the arboretum.
- **An arboretum public dimension** that includes some level of public access, and at least one public event or educational program each year focused on trees or arboretum purposes (for example, an Arbor Day observance).



LEVEL I	
Arboretum plan	■
Organizational or governance group	■
Labeled tree and woody plant taxa	
25+	■
100+	
500+	
Staff or volunteer support	
Volunteer or paid	■

[View list of Level I Accredited Arboreta](#)

[Level I sample application download](#)



ACCREDITATION CRITERIA

APPLY FOR ACCREDITATION

LEVELS OF ACCREDITATION

LEVEL I CRITERIA

LEVEL II CRITERIA

LEVEL III CRITERIA

LEVEL IV CRITERIA

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# ARBORETUM ACCREDITATION PROGRAM

ArbNet created its Arboretum Accreditation Program to establish and share a widely recognized set of industry standards for the purpose of unifying the arboretum community. No other international program of accreditation exists that is specific to arboreta. Any arboretum or public garden with a substantial focus on woody plants may apply. Accreditation is based on self-assessment and documentation of an arboretum's level of achievement of accreditation standards, including planning, governance, number of species, staff or volunteer support, education and public programming, and tree science research and conservation. The entire program is **free of charge**.

## Apply for Accreditation

## View listing of all accredited arboreta

### The ArbNet Arboretum Accreditation Program

- Recognizes arboreta at various levels of development, capacity, and professionalism
- Fosters professionalism of arboreta worldwide
- Enables collaboration in scientific, collections, and conservation activities
- Advances the planting, study, and conservation of trees.

### Benefits of accreditation

- Be recognized for achievement of specified levels of professional practice.
- Work toward higher levels of professional standards once accredited.
- Identify other organizations at similar or higher levels of accreditation to provide comparative benchmarks and models for further achievement.
- Earn distinction in your community, university, college, or government agency.
- Exert leadership and influence by serving as a model to encourage professional development in other organizations.
- Identify opportunities for collaboration with other arboreta for scientific, collections, or conservation activities.



### Examples of institutions that may be accredited arboreta

- arboreta and botanic gardens

- historic properties
- college campuses
- cemeteries
- zoos
- city tree collections
- corporate campuses
- school property
- golf course
- nature reserves
- municipal parks

For specific information on which level to pursue, please visit the [levels of accreditation](#) page.

## View map of all accredited arboreta

### Map of Accredited Arboreta ☆



Map data ©2020 [Terms](#) 2,000 mi



ACCREDITATION CRITERIA

APPLY FOR ACCREDITATION

LEVELS OF ACCREDITATION

LEVEL I CRITERIA

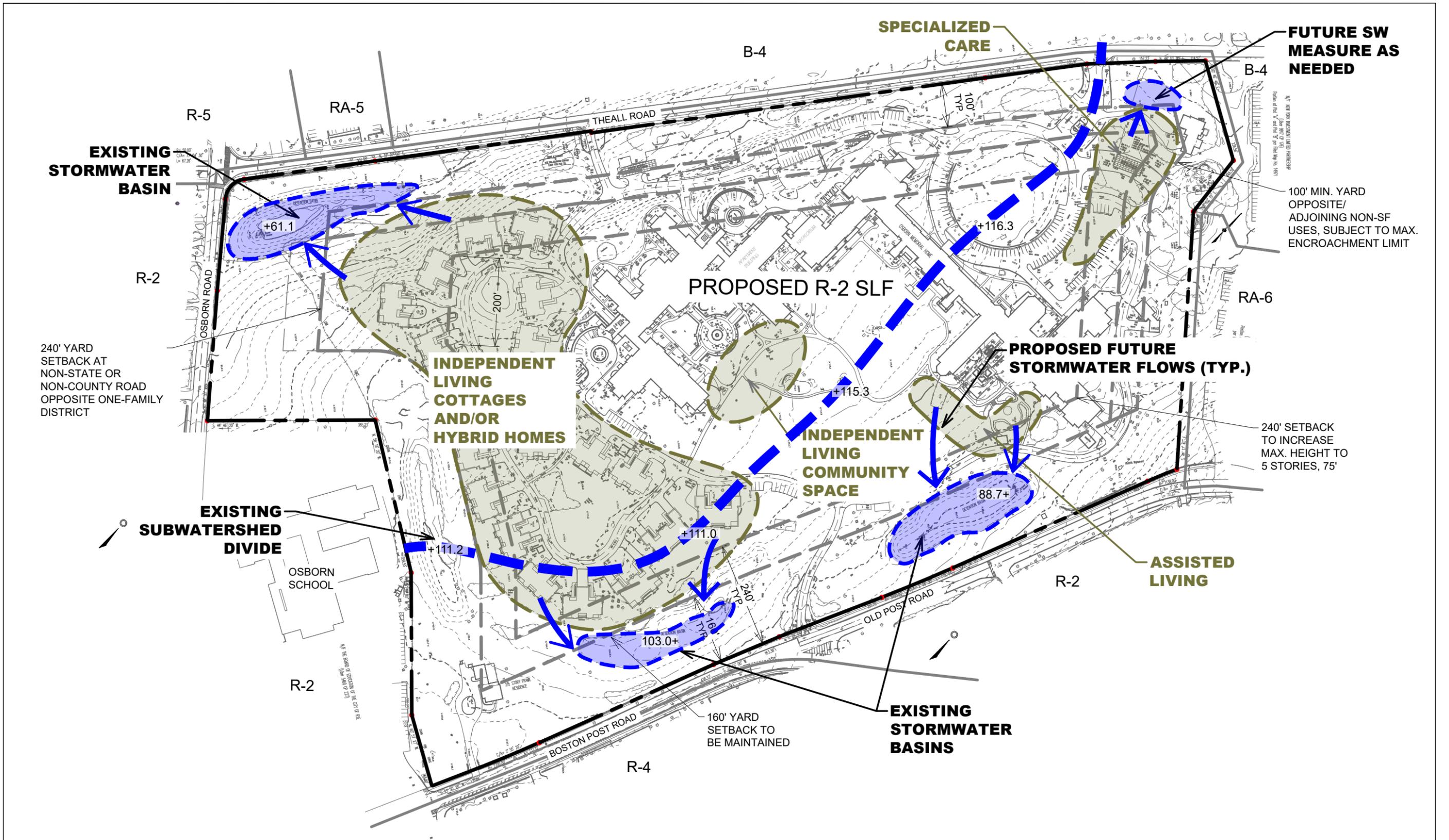
LEVEL II CRITERIA

LEVEL III CRITERIA

**B. Stormwater Management**

The Osborn campus sits atop a localized ridge line, with a subwatershed divide running north-south through the site and approximately along the center line of the original Osborn building. As part of the 1990's campus improvements, three stormwater basins – two situated along Boston Post Road, the third along Theall Road – were constructed to treat and manage runoff associated with the new Sterling Park, Pavilion and cottage buildings and associated roads, parking and paved areas. Subsequent additions to the parking and use areas on campus have been treated via subsurface stormwater measures that connected to the three basins or other existing on-site outfalls.

As shown in the Proposed Future Stormwater Treatment diagram (Exhibit V.2-5) The Osborn anticipates that the change in impervious surfaces within Future Use Areas will be treated similarly and will primarily connect to the existing three basins. Drainage analyses to be provided with each proposed improvement project will compare existing and proposed impervious areas and provide for measures that meet all current City of Rye and New York State stormwater quantity and quality treatment requirements. A new stormwater measure may be required at the northwest corner of the site north of the existing main entry drive as noted.



### C. Views to Site

#### 1. Existing Views

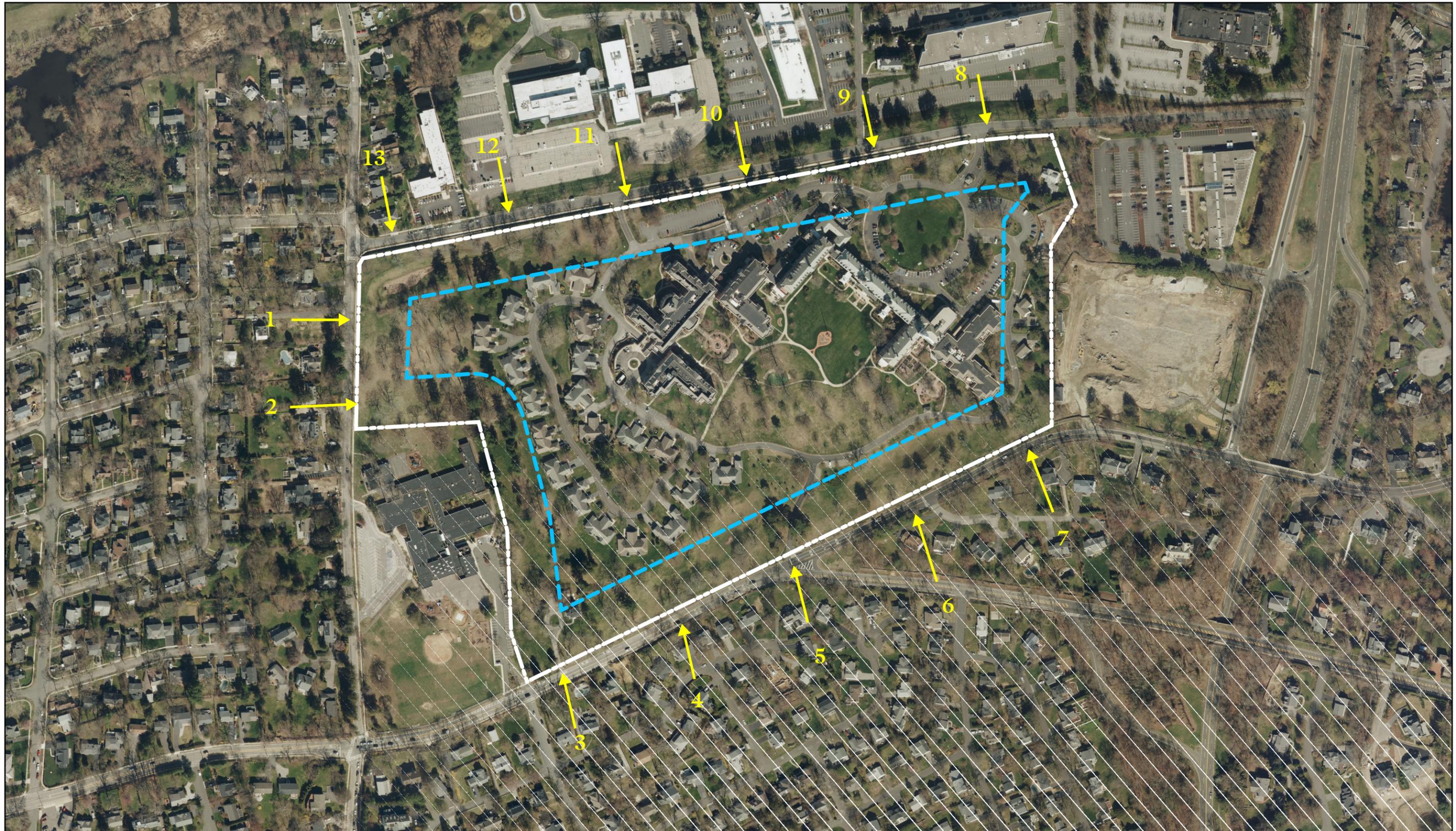
Views to the Osborn campus from public vantage points are available from the three adjoining streets – Osborn Road on the south, Boston Post Road and Old Post Road on the east, and Theall Road on the west. Photos from thirteen evenly spaced locations along those frontages generally show manicured lawns with mature trees both along the perimeter and within the campus interior; partial views to buildings that are set back varied distances from the boundary and generally oriented diagonally to the streets and screened by trees; and occasional views to Osborn entry drives, interior roadways and parking. See Exhibit V.2-6, and Views (1-13) to Site.

#### 2. Future Views

The proposed zoning amendment provisions have been planned to maintain the character of the existing Osborn campus as viewed from adjoining streets while allowing for building and site improvements as described herein. Minimum building setbacks for the R-2 Senior Living Use are proposed that would maintain the 160-foot setback along Boston Post Road and Old Post Road, increase the setback to 240-feet along Osborn Road, and allow for limited setback reductions along Theall Road opposite non-residential uses. See also discussion Tab 5, Section 1. Zoning and Land Use.

The maximum building height for R-2 Senior Living Uses is proposed to vary based on a proposed building's distance from the site's boundary. The standard maximum height is proposed to be 4 stories, 60 feet. Where a building is proposed to be set back more than 240 feet from the boundary, however, the maximum permitted height would be 5 stories, 75 feet. This is the same maximum height currently permitted under the 1993 Declaration (see Tab 5, Section 1).

The visual effects of the proposed increase in permitted building height with increased setback is illustrated in an east-west cross-section through the Osborn campus as shown in Exhibits V.2-7 to V.2.10. From the vantage point of an observer at Boston Post Road on the east and Theall Road on the west, the sight line to the top of a 60' tall building set 160 feet back from the boundary is lower than the sight line to the top of a 75' tall building set 240 feet back from the boundary. This is reflective of the existing views to the Osborn buildings set within the center of the campus, as the combination of their distance from the outside observer and the landscaped buffer limits their effect within the overall viewscape.



0 300 600 FEET

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IEWS TO SITE  
THE OSBORN  
RYE, NEW YORK

Exhibit V.2-6



VIEW 1 FROM OSBORN ROAD



VIEW 2 FROM OSBORN ROAD



KEY PLAN

VIEW TO SITE: 1 & 2  
 THE OSBORN  
 RYE, NEW YORK

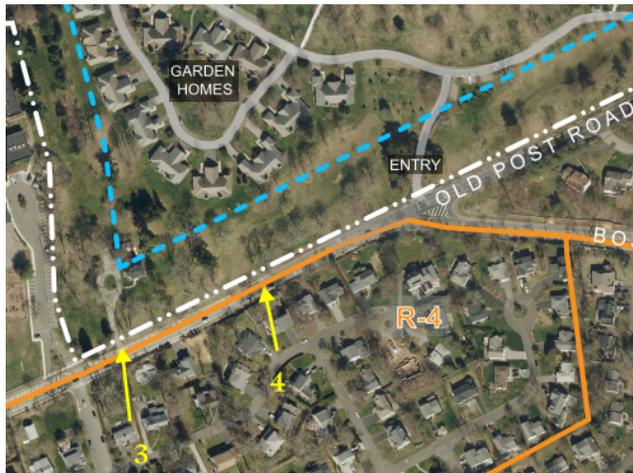
EXHIBIT V.2-6



VIEW 3 FROM BOSTON POST ROAD



VIEW 4 FROM BOSTON POST ROAD



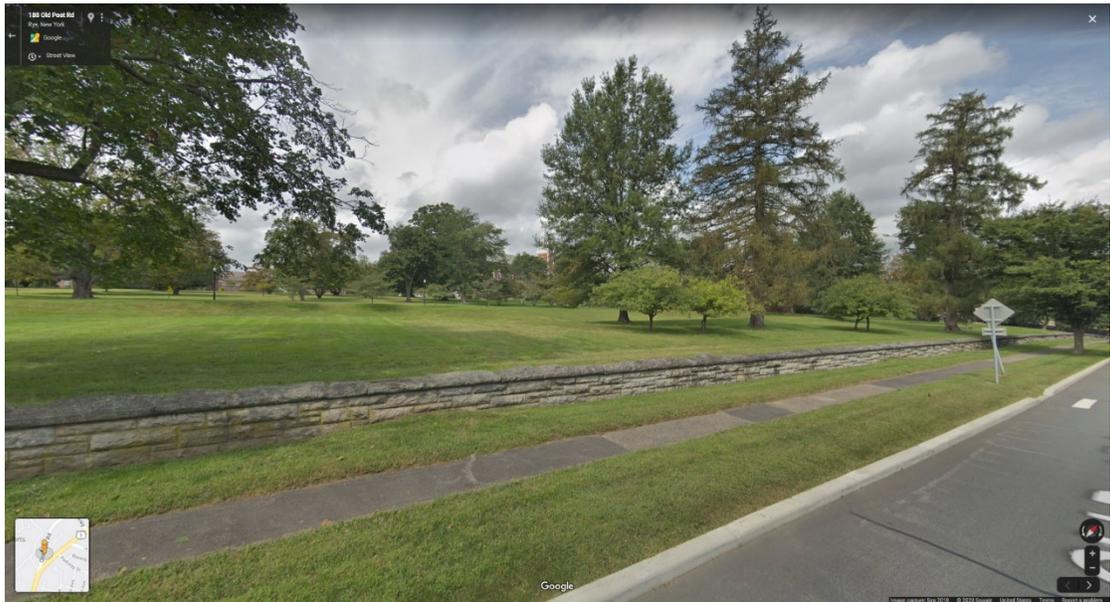
KEY PLAN

VIEWS TO SITE: 3 & 4  
THE OSBORN  
RYE, NEW YORK

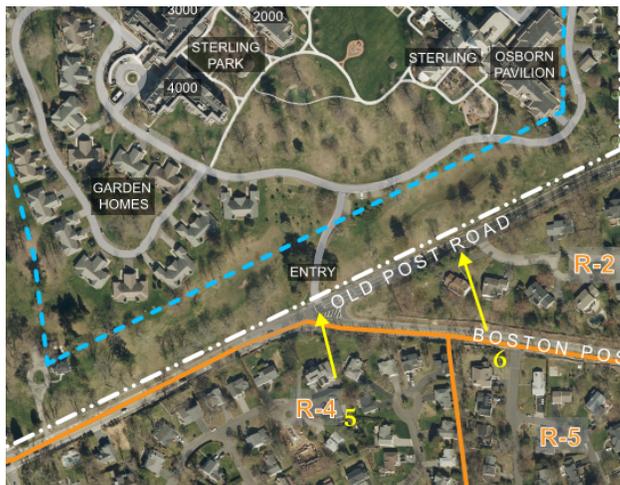
EXHIBIT V.2-6



VIEW 5 FROM OLD POST ROAD



VIEW 6 FROM OLD POST ROAD



KEY PLAN

**VIEW TO SITE: 5 & 6**  
**THE OSBORN**  
**RYE, NEW YORK**

EXHIBIT V.2-6



VIEW 7 FROM OLD POST ROAD



KEY PLAN

VIEW TO SITE: 7  
THE OSBORN  
RYE, NEW YORK

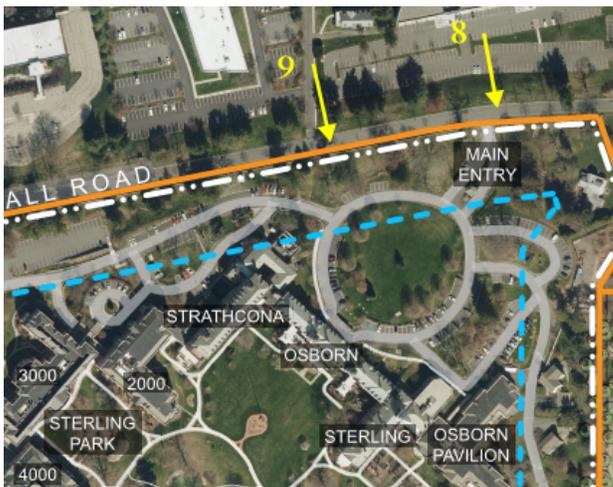
EXHIBIT V.2-6



VIEW 8 FROM THEALL ROAD



VIEW 9 FROM THEALL ROAD



KEY PLAN

**IEWS TO SITE: 8 & 9**  
**THE OSBORN**  
**RYE, NEW YORK**

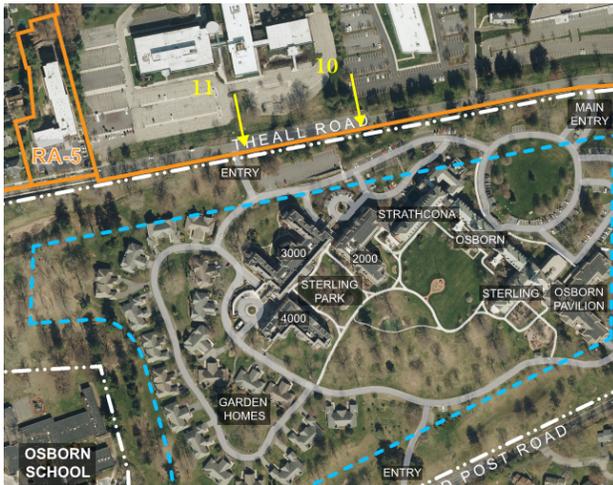
EXHIBIT V.2-6



VIEW 10 FROM THEALL ROAD



VIEW 11 FROM THEALL ROAD



KEY PLAN

VIEW TO SITE: 10 & 11  
 THE OSBORN  
 RYE, NEW YORK

EXHIBIT V.2-6



VIEW 12 FROM THEALL ROAD



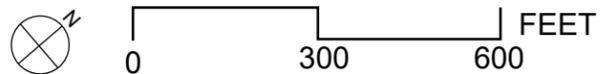
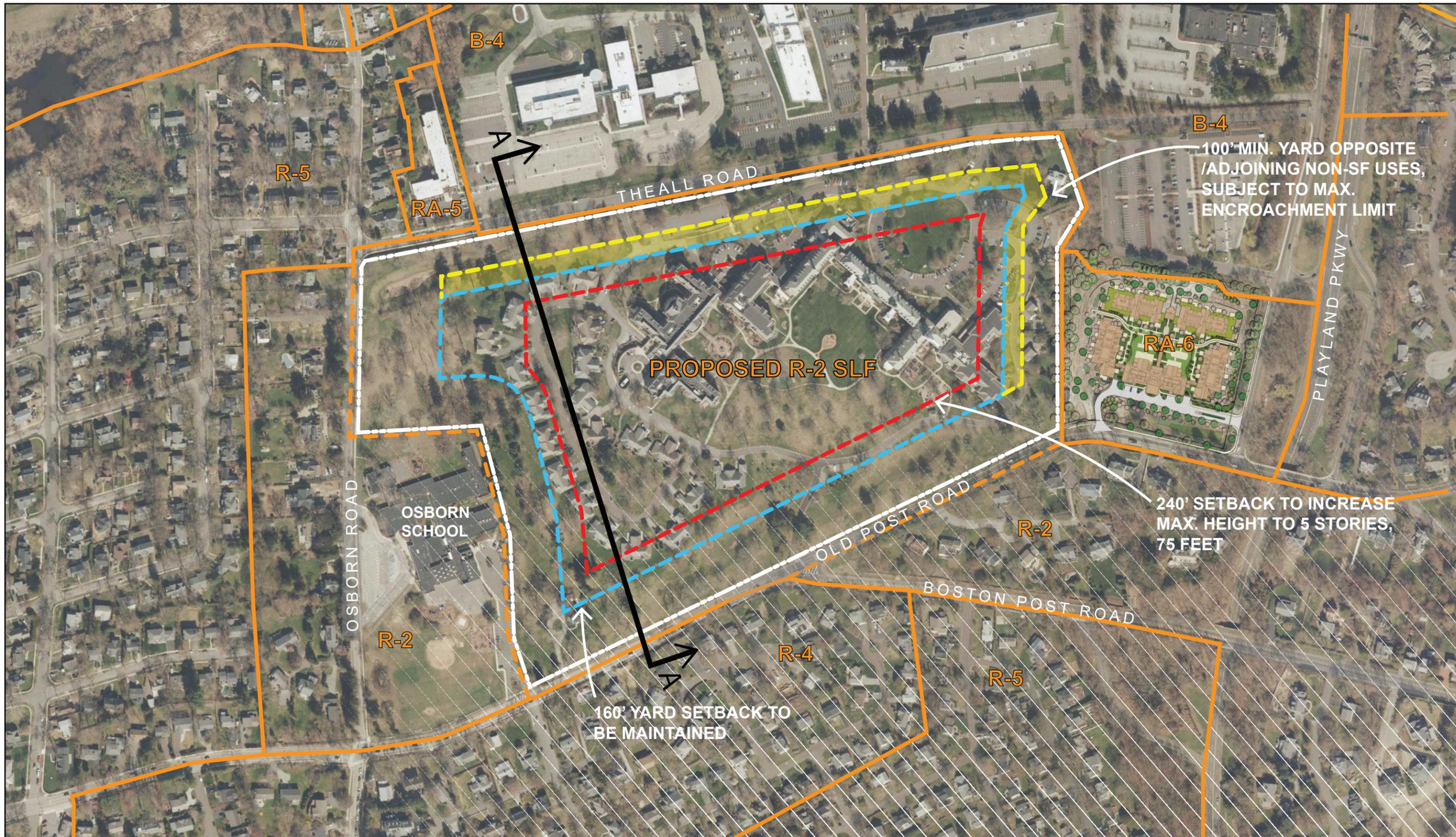
VIEW 13 FROM THEALL ROAD

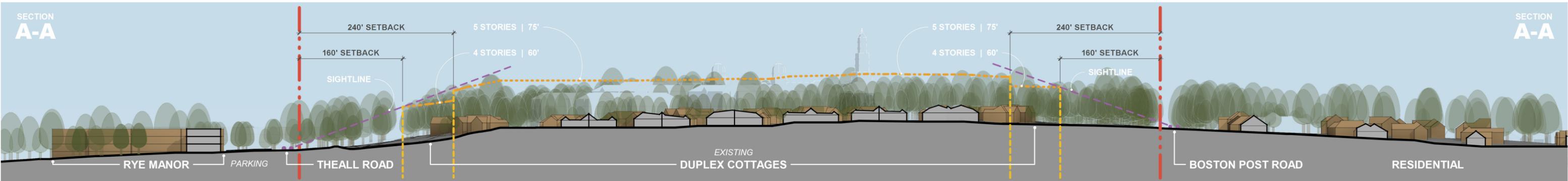


KEY PLAN

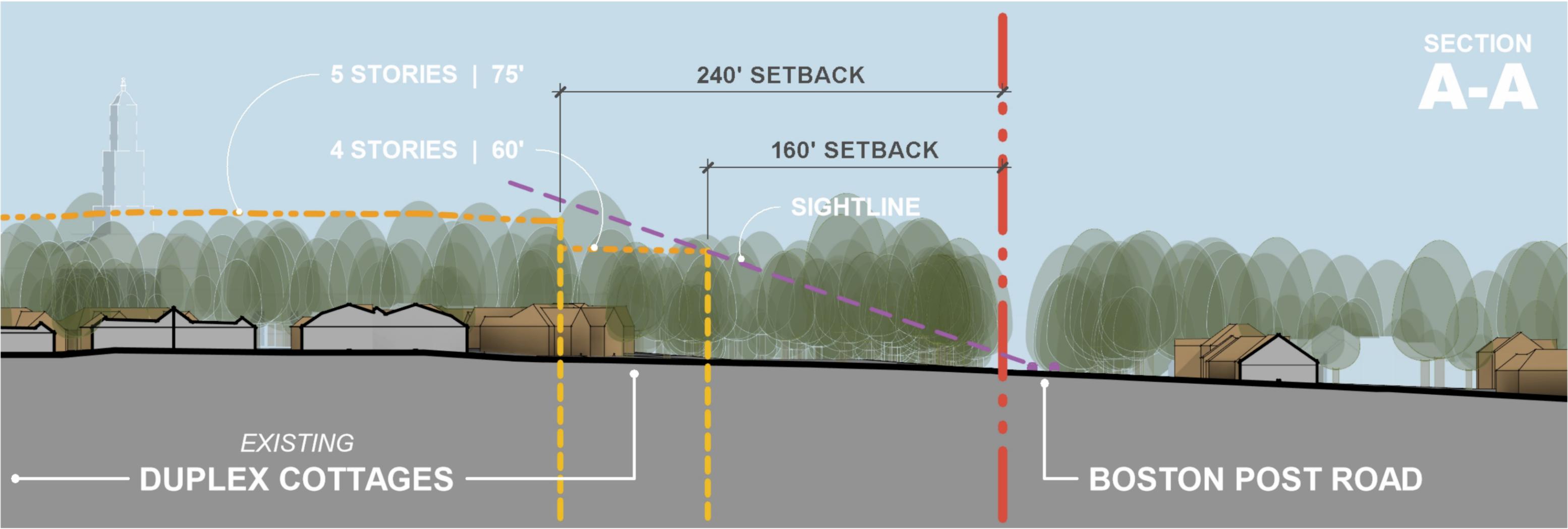
IEWS TO SITE: 12 & 13  
THE OSBORN  
RYE, NEW YORK

EXHIBIT V.2-6

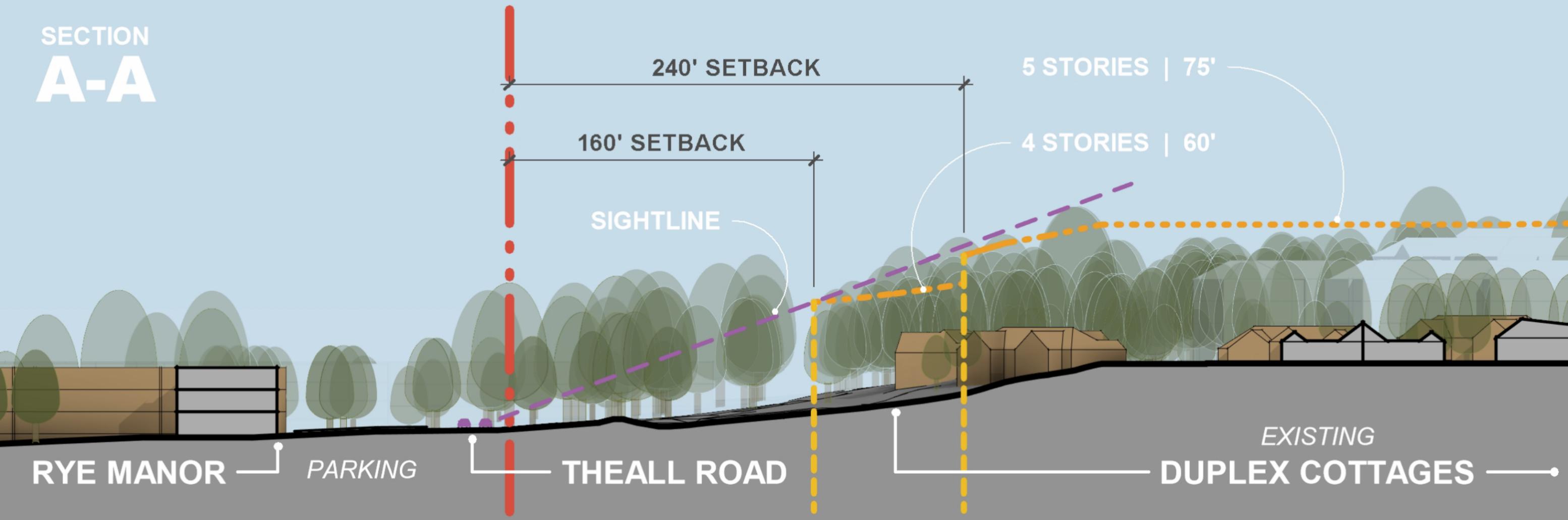




SECTION  
**A-A**



SECTION  
**A-A**



# THE OSBORN

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## V.3. UTILITIES

3. UTILITIES

**A. Sanitary Sewer**

*Existing Sanitary Sewer Flows*

Over a three-month period in 2019, water meter readings at The Osborn's averaged approximately 45,000 gallons per day (gpd). Based on this level of water usage, The Osborn's daily sanitary sewer flows would be approximately 41,000 gpd.<sup>1</sup>

For new projects, sanitary sewer flows are estimated based on NYS Department of Environmental Conservation (DEC) design flow rates applied to proposed program components. Based on these NYSDEC standards, the Osborn facility would have a projected daily sewer flow of approximately 65,110 gpd, as shown on Exhibit V.3-1, Existing Sanitary Sewer Demand.<sup>2</sup> Based on The Osborn's metered water usage data, however, actual sanitary sewer flows represent only 63% of the NYSDEC projection.

*Existing City of Rye Sanitary Sewer System*

The Osborn's sanitary wastewater flows are conveyed into the City of Rye's sanitary sewer system via four (4) existing service connections located at the northeast, northwest, southeast and southwest corners of the project site, as shown on Exhibit V.3-2, Sanitary Sewer Map.

The northeast connection collects sanitary sewer flows from 195 units of housing, comprised of a Skilled Nursing facility with 84 beds, 110 Assisted Living units and 1 Staff home, which are piped to the City's 8-inch sewer main in Old Post Road. The southeast connection collects sanitary sewer flows from 187 units of housing, comprised of 148 Independent Living units, 19 garden home units and 1 staff residence, that are piped to the City's 8-inch sewer main in Boston Post Road at Sonn Drive. The sanitary wastewater flows from the Boston Post Road and Old Post Road connections are directed from the City's sewer system to Westchester County's Blind Brook Sewer District's trunk sewer and Blind Brook Water Treatment Plant (WWTP).

The northwest connection collects sanitary sewer flows from one staff residence and the gate house and piped to a sewer main located in Theall Road. The southwest connection collects sanitary sewer flows from 21 garden home units that are directed to an 8-inch sewer in Osborn Road. Both service connections at Osborn Road and Theall Road flow into the City's sewer that connects to the County's Mamaroneck Sewer District trunk sewer and Mamaroneck WWTP.

The City recently authorized sewer testing and evaluations of the public sewer systems that are being performed by its consultant Barton & Loguidice. The sanitary sewer evaluation survey (SSES) has identified deficiencies throughout the City's sewer system and possible inflow and infiltration (I&I) concerns. Three of the sanitary subsystems identified on the preliminary list of rehabilitation work collect sanitary flows from The Osborn. The Old Post Road and Boston Post Road subsystems account for 95% of daily flows and the Osborn Road and Theall Road

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<sup>1</sup> Sanitary sewer flow is estimated to be approximately 10% lower than water demand to account for water flow that does not enter the sanitary sewer system

<sup>2</sup> Unit flow values based on NYSDEC Design Standards for Wastewater Treatment Works, March 2014. Table B-3

Zoning Text Amendment Petition  
R-2 Senior Living Use

subsystems account for the remaining 5%. Based on preliminary findings in the study, the Post Road subsystem has the greatest structural deficiencies and capacity concerns, followed by the Osborn Road and Old Post Road sewer systems.

*Estimated Potential Future Sanitary Sewer Flows*

As discussed in Section IV.3.B, the potential future improvements at The Osborn include up to 80 Independent Living units and 50 Assisted Living units. Using the conservative NYSDEC sanitary sewer loading rates, these improvements could generate up to 15,300 gpd of additional sanitary sewer flow.<sup>3</sup> However, actual potential future daily sanitary sewer flows are expected to be lower consistent with the metered water usage from current facility.

*Impacts to City of Rye Sewer System*

As discussed above, potential future improvements could generate up to 15,300 gpd in additional sanitary flows that would be conveyed from The Osborn into the City's sewer system and their respective County trunk sewers and treatment plants. Based on discussion with the Westchester County Department of Environmental Facilities (DEF) the Mamaroneck WWTP, Blind Brook WWTP, and County trunk sewer are anticipated to have capacity to accommodate additional flows. Future improvements could be accompanied by 3 to 1 Infiltration and Inflow (I&I) reduction to offset additional sanitary flows from The Osborn.<sup>4</sup>

In coordination with the City Engineer's office, The Osborn will be undertaking additional flow metering near its campus to supplement the SSES data. With this information, future improvements could be designed to avoid and minimize impact to the City's sanitary subsystems by redirecting some portion of The Osborn's existing flows to the Osborn Road subsystem or others where adequate capacity is determined. Therefore, it is not anticipated that the proposed zoning text amendment will result in a significant adverse impact on the City of Rye's sewer system.

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<sup>3</sup> Ibid. Based on 110 gpd for the 80 independent living units (apartments) and 130 gpd for the 50 assisted living units

<sup>4</sup> M. Pompa, Associate Engineer, Westchester County DEF and Gerhard M. Schwalbe, P.E. Divney Tung Schwalbe, LLP. phone conversation. Jan 9, 2020.

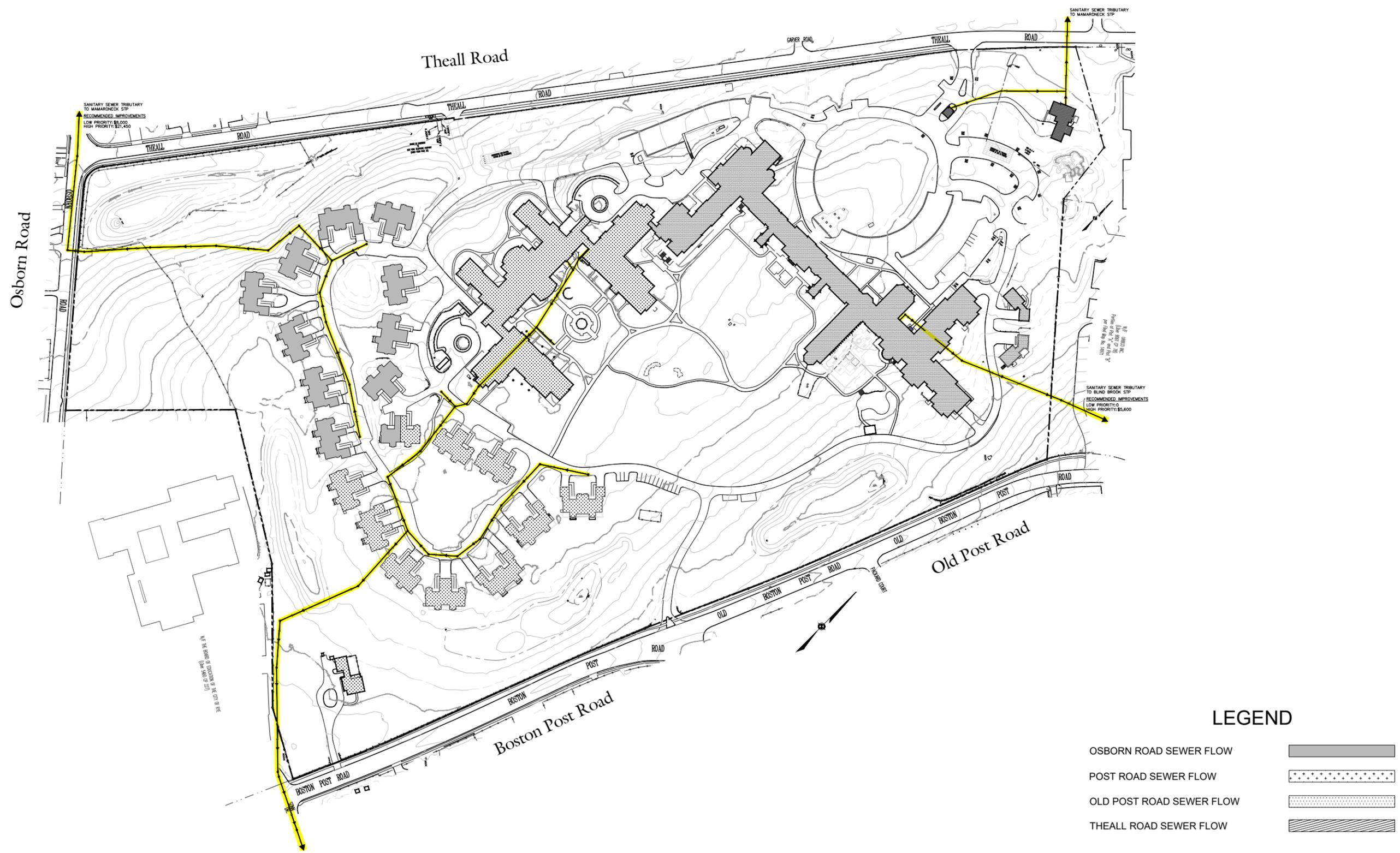
**PROJECTED SANITARY SEWER DEMAND - EXISTING OSBORN FACILITIES**

USE TYPE	AMOUNT	UNIT	SANITARY LOAD	
			UNIT FLOW <sup>1</sup>	AVERAGE DAILY FLOW (gpd)
Nursing Beds	84	beds	175 gpd/bed	14,700
Memory Care (no kitchens)	13	units	130 gpd/unit	1,690
Assisted Living (no cooking)	97	units	130 gpd/unit	12,610
Independent Living Apartments	148	units	110 gpd/unit	16,280
Garden Homes	40	unit	110 gpd/unit	4,400
Staff Residences (3)	13	bedrooms	110 gpd/bedroom	1,430
All staff	650	persons	20 gpd/person	13,000
Pool Backwash (6 hours/day)	1	--	1000 --	1,000

Average Daily Flow (GPD)

65,110
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<sup>1</sup> Unit flow values based on NYSDEC Design Standards for Intermediate Sized Wastewater Treatment Systems, Dated 3/5/2014, Table B-3, pp. B-16.



## B. Water Supply

Water for domestic and fire protection is provided to The Osborn campus via three service connections to public water mains owned and operated by Suez Water. Two connections to the water main on Theall Road service the distribution system on the western frontage of the project, and one service connection to the water main in Boston Post Road provides service to the loop on the eastern frontage. See Exhibit V.3-3, Existing Utilities Map.

The Osborn's distribution loop within the campus runs northeast beneath the campus access road to the Strathcona, Sterling and Osborn buildings. The loop runs south and west around the Sterling Park Buildings and the Cottages, beneath the campus access road.

### *Existing Water Use*

Over a three-month period in 2019, total water use for The Osborn was recorded to be 4,145,416 gallons. The Osborn's average daily usage is 45,000 gpd for 382 units of housing including meal preparation and housekeeping services. Independent Living units and Cottages have operating kitchens and Assisted Living units are equipped with kitchenettes, although currently most residents do not prepare their own meals and rely on dining services. The dining service facilities provide meals for both residents and over 400+ staff, preparing up to 925 meals daily.

Water for irrigating the grounds and gardens during the growing season is provided via existing on-site wells and reduces demand on the public water system during peak irrigation periods.

### *Estimated Potential Future Water Demand*

The potential future increase in water usage is conservatively estimated to be 16,830 gpd for an addition of 80 Independent Living units and 50 Assisted Living units.<sup>5</sup> However, as discussed regarding sanitary sewer flows above, the actual future potential water usage is anticipated to be lower based on the actual water usage data for the current facility.

Water mains and distribution lines may need to be relocated during future improvements at The Osborn to accommodate site planning and design considerations that will be codified under the proposed zoning text amendment.

## C. Natural Gas

### *Existing Natural Gas Usage*

The Osborn provides heat and hot water for all existing residential buildings using natural gas and oil-fired boilers and domestic hot water tanks. The existing on-site gas distribution system is shown on Exhibit V.3-3, Existing Utilities Map. The Strathcona, Sterling and Osborn buildings ("SOS"), the oldest on the campus, are heated from steam generation produced by interruptible dual fuel boilers. Upon advance notice from Con Edison, typically on the coldest heating days, The Osborn switches its boilers from natural gas to fuel oil stored in above ground tanks. The

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<sup>5</sup> 10% added to potential sanitary sewer flows, described in Section V.3.A, to obtain water demand flow rate.

Zoning Text Amendment Petition  
R-2 Senior Living Use

switch is generally for short periods of up to 24 hours.

The heat and hot water for the Sterling Park Independent Living apartment buildings, Garden Homes (Cottages) and Pavilion (Skilled Nursing Facility) are fueled by natural gas, which is non-interruptible.

*Future Natural Gas Usage*

Due to an existing natural gas supply constraint, Con Edison has instituted a moratorium for new gas connections within the lower Westchester County area, however new applications for interruptible service are still being accepted. As the potential future improvements come online over time, The Osborn will coordinate with Con Edison regarding the utility's ability to provide natural gas through interruptible and/or non-interruptible service.



DATE: 08/15/18  
 DRAWN BY: [unintelligible]  
 CHECKED BY: [unintelligible]  
 PROJECT NO: [unintelligible]

**LEGEND**

- EXISTING 8" PVC SEWER PIPE
- EXISTING WATER LINE
- EXISTING GAS LINE

# THE OSBORN

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## V.4. COMMUNITY ISSUES

4. COMMUNITY ISSUES – EXISTING CONDITIONS AND POTENTIAL IMPACTS

**A. Rye City School District**

No school-aged children would be generated by the proposed zoning text amendment for the senior living units. The Osborn is an age restricted facility that limits the household composition of its senior residents to members and their companions. The proposed amendment will add a new Section (15) entitled “R-2 Senior Living Facilities to Table A, column 2 under the heading “R-1, R-2, R-3, R-4, R-5, R-6, RS and RT Districts”, which states:

*(a) Residents of R-2 Senior Living Facilities shall be limited to: (i) a single person 55 years of age or older; (ii) two or three persons, all of whom are 55 years of age or older; (iii) a married couple, live-in companion, or partner, one of which is 55 years of age or older; (iv) the surviving spouse of a person 55 years of age or older, provided that the surviving spouse was duly registered as a resident of the development at the time of the elderly person's death; and (v) one adult 18 years of age or older residing with a person who is 55 years of age or older, provided that said adult is essential to the long-term care of the elderly person as certified by a physician duly licensed in New York State.*

A limited number of school aged children may be generated by three existing residences for staff and caretakers of the Osborn. The proposed zoning text amendment would permit:

*[1] Notwithstanding the foregoing, up to four (4) dwelling units within the community may be set aside to be occupied by a superintendent, building manager, or other staff member and their family, to which the limitations on occupancy set forth above shall not apply.*

This would result in a net increase of one (1) additional staff residence that could potentially generate school-aged children at the Osborn. As discussed, The Osborn currently contributes over \$1.3 million in tax revenue to the School District. Therefore, it is not anticipated that school children generated by one (1) additional staff residence would result in an adverse significant impact on the Rye City School District.

**B. Emergency Services**

*Emergency Medical Services- Ambulance Corps*

Emergency medical services in the City of Rye are provided by the Port Chester-Rye-Rye Brook Emergency Medical Services (“PCRRB EMS” or “EMS”), which is headquartered in Port Chester. The organization is staffed by paid paramedics and emergency medical technicians

Zoning Text Amendment Petition  
R-2 Senior Living Use

along with volunteers. A meeting was held with Scott Moore, Administrator and Anthony Sutton, Supervisor (“EMS staff”) to discuss the proposed zoning text amendments.<sup>1</sup>

Mr. Moore and Mr. Sutton indicated that the response time to The Osborn is typically between five and seven minutes from PCRRB EMS headquarters, which is within the eight-minute response time required as per the contract with the three municipalities. Services rendered by PCRRB EMS are billed to patients and/or their insurance providers for emergency calls. EMS staff indicated that they did not anticipate significant adverse impacts as a result of a future increase in resident population.

As part of future site plan applications, EMS staff recommended that elevators be sized to accommodate a stretcher and be located convenient to main entrances within buildings. EMS staff also suggested that port cocheres or covered areas near main entrances would provide protection for EMS crews from the weather during service calls.

The Osborn has had an ongoing collaborative relationship with PCRRB EMS and will continue to discuss opportunities that would enable PCRRB EMS to best serve The Osborn and the surrounding area in the future.

*Rye City Fire Department*

The Rye Fire Department is a combination department consisting of both volunteer and career firefighters and serves the entire City of Rye. The Department’s headquarters is located at 15 Locust Avenue and Station 2 is located at 560 Milton Road, both in Rye approximately 1.5 miles northeast and southeast of The Osborn, respectively. The Applicant has contacted the Rye Fire Department to discuss the proposed zoning text amendments. Similar to discussions with the PCRRB EMS, it is not anticipated that the future scope of improvements for the Osborn, described in Section 3, would result in any significant adverse impacts on fire services. The Osborn will continue to coordinate with the Fire Department related to fire safety and issues and future facility and campus planning.

*Rye City Police Department*

The Rye City Police Department is headquartered at 21 McCullough Place in Rye, approximately 1.5 miles northeast of The Osborn. The Applicant has contacted the Rye Police Department to discuss the proposed zoning text amendments. Similar to discussions with the PCRRB EMS, it is not anticipated that the future scope of improvements at The Osborn, described in Section 3, would result in any significant adverse impacts on police services. The

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<sup>1</sup> Meeting with Scott Moore, Administrator and Anthony Sutton, Supervisor (Port Chester – Rye - Rye Brook EMS), Matt Anderson, CEO and Chris Ferreri, COO (The Osborn), and Matthew Steinberg (Divney Tung Schwalbe, LLP). March 2, 2020. PCRRB EMS headquarters, 417 Ellendale Avenue, Port Chester, NY.

Zoning Text Amendment Petition  
R-2 Senior Living Use

Osborn will continue to coordinate with the Police Department related to its public safety procedures and future facility and campus planning.

**C. Circulation and Traffic**

The main driveway to The Osborn is located on Theall Road approximately 1,000 feet west of Playland Parkway Access Road. The main driveway provides entry and exit for visitors, staff, and residents, and is manned twenty-four hours per day. Secondary gated electronic-access driveways are located approximately 1,000 feet west of the main entrance and on the south side of the campus near the intersection of Old Post Road and Boston Post Road. Entry and exit at the secondary driveways are available only to residents and staff with electronic transponders or “fobs”. It is expected that future access to and from the site will remain the same as it currently exists.

Based on The Osborn observations, most of the residents in the independent living units have personal vehicles; however, many of them are infrequently used. A limited number of residents in the independent living units work off-campus.

The assisted living and nursing staff at The Osborn are employed in three shifts 7:30am-3:30pm (day shift), 3:30pm-11:30pm (evening shift), and 11:30pm-7:30am (night shift). Osborn Home Care has approximately 400 staff members, with approximately 300 working daily at the site. The home care caregivers work varying shifts to meet the needs of the residents that generally begin at 8am and end at 4pm, 6pm or 8pm. Based on traffic count data from the New York State Department of Transportation (NYSDOT), the peak hours of traffic recorded on Playland Access Road and Osborn Road were from 8am-9am in the morning and 5pm-6pm in the evening.<sup>2</sup> Based on the existing shifts at the Osborn, employees of the assisted living and nursing facility and home care services arrive at the site before the morning peak hour. While departure times vary, most employees depart from the site before or after the afternoon peak hour. Additionally, The Osborn operates a shuttle for staff between the site and the Harrison Metro-North Railroad Station, located approximately one-mile west of the site.<sup>3</sup>

Estimated vehicle trip volumes based on potential future improvements to The Osborn, described in Section 3, were determined based on information from the Institute of Traffic Engineers’ (ITE) publication *Trip Generation Manual*, 10<sup>th</sup> Edition. ITE Land Use 252 Senior Adult Housing-Attached was used for the independent living apartments and hybrid homes, and

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<sup>2</sup> New York State Department of Transportation, Traffic Count Hourly Report. Data for Playland Access Road from North Street to Theodore Fremd Avenue, August 16 – 21, 2015 and Osborn Road from Boston Post Road to City Line, May 17-20, 2016.

<sup>3</sup> The shuttle runs daily on a continuous loop from 7:15am-9:00am and 3:30pm-5:00pm. 50 to 60 staff members utilize the shuttle daily.

Zoning Text Amendment Petition  
R-2 Senior Living Use

Land Use 254 was used for the assisted living units and memory care units. No reductions were applied to account for any existing public transportation service.

Table V.4-1, *Estimated Trip Generation* summarizes the trips that would be generated by the potential future improvements at 37 and 44 vehicle trip ends during the weekday morning and weekday afternoon peak hours, respectively. It is not anticipated that these trips would result in significant adverse impacts on the surrounding roadways.

**Table V.4-1 - Estimated Trip Generation**

Land Use <sup>4</sup>	Size	Traffic Direction	Vehicle Trip Ends			
			Weekday Morning AM Peak Hour	Weekday Afternoon PM Peak Hour	Saturday Peak Hour	Sunday Peak Hour
Senior Adult Housing - Attached (ITE 252)	80 (net new) Dwelling Units <sup>5</sup>	Enter	13	14	17	18
		Exit	<u>14</u>	<u>12</u>	<u>11</u>	<u>11</u>
		<b>Total</b>	<b>27</b>	<b>25</b>	<b>27</b>	<b>29</b>
Assisted Living (ITE 252)	50 Beds <sup>6</sup>	Enter	7	8	7	7
		Exit	<u>3</u>	<u>10</u>	<u>8</u>	<u>8</u>
		<b>Total</b>	<b>9</b>	<b>17</b>	<b>14</b>	<b>14</b>
<b>Total Trips (net new)</b>		Enter	20	22	24	25
		Exit	<u>17</u>	<u>22</u>	<u>19</u>	<u>19</u>
		<b>Total</b>	<b>37</b>	<b>44</b>	<b>43</b>	<b>44</b>

<sup>4</sup> *Trip Generation Manual 10th Edition - Volume 2: Data*. Institute of Transportation Engineers (ITE). September 2017.

<sup>5</sup> Based on replacement of 40 Sterling Park Cottages and addition of 120 new independent living units in hybrid homes and new IL wing

<sup>6</sup> Based on 50 Assisted Living/Memory Care units in studio/1-bedroom/2-bedroom unit layouts



# CITY COUNCIL AGENDA

DEPT.: Building

DATE: May 13, 2020

CONTACT: Christian K. Miller, City Planner

**AGENDA ITEM:** Consideration of setting a public hearing for May 27, 2020 to amend Chapter 133 Noise of the Code of the City of Rye, by amending § 133- 8(G) "Permit required; construction work, mechanical rock removal and blasting restrictions" to prohibit certain activities through June 30, 2020.

**FOR THE MEETING OF:**

May 13, 2020

**RYE CITY CODE,  
CHAPTER  
SECTION**

**RECOMMENDATION:** That the City Council set the public hearing.

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:** Due to the COVID-19 health emergency, temporary noise reduction measures must be taken to accommodate stay-at-home restrictions.

All public hearing comments should be emailed to [publichearingcomments@ryeny.gov](mailto:publichearingcomments@ryeny.gov) with "Chapter 133" as the subject.

**CITY OF RYE**  
**LOCAL LAW NO. \_\_\_\_-2020**

**A local law to amend Chapter 133 Noise of the Code of the City of Rye, by amending § 133-8(G) “Permit required; construction work, mechanical rock removal and blasting restrictions” to prohibit certain activities through June 30, 2020.**

Be it enacted by the City Council of the City of Rye as follows:

**Section 1.**

**§ 133-8(G). Mechanical rock removal, including mechanical rock excavation, and blasting are prohibited at certain hours and on certain days.**

Mechanical rock removal, including mechanical rock excavation, and blasting are prohibited at certain hours and on certain days. No person shall engage in mechanical rock removal, including mechanical rock excavation, as defined in Subsection A, or blasting operations using explosives as defined by § 98-40, within the City of Rye after the hour of 3:30 p.m. or before 9:00 a.m. on weekdays or at any time on Saturday or Sunday; or on any of the following holidays and time periods: New Year’s Day, Presidents’ Day, Martin Luther King Jr. Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Yom Kippur, Thanksgiving Day through Thanksgiving weekend and Christmas Day through New Year’s Day except under authority of a special permit issued by the City Manager. In addition, mechanical rock removal, including mechanical rock excavation, and blasting will be prohibited within 500 feet of a school on testing days. **For 2020 only, from May 29, 2020 through June 30, 2020, mechanical rock removal, including mechanical rock excavation and blasting are prohibited.**

**Section 2:** This local law shall take effect immediately upon filing with the Secretary of State.



# CITY COUNCIL AGENDA

DEPT.: Building

DATE: May 13, 2020

CONTACT: Christian K. Miller, City Planner

**AGENDA ITEM:** Consideration to set a public hearing on May 27, 2020 to adopt a twelve-month moratorium in the City of Rye temporarily prohibiting the review, processing or approval of any application related to the storage and dissemination of compressed natural gas or other type of energy or fuel transfer or energy or fuel generating facility.

**FOR THE MEETING OF:**

May 13, 2020

**RYE CITY CODE,  
CHAPTER  
SECTION**

**RECOMMENDATION:** That the City Council set the public hearing.

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:**

All public hearing comments should be emailed to [publichearingcomments@ryeny.gov](mailto:publichearingcomments@ryeny.gov) with "Moratorium" as the subject.

**CITY OF RYE**

**LOCAL LAW NO. \_\_ OF 2020**

**A Local Law adopting a twelve-month moratorium in the City of Rye temporarily prohibiting the review, processing or approval of any application related to the storage and dissemination of compressed natural gas or other type of energy or fuel transfer or energy or fuel generating facility.**

WHEREAS, the Rye City Code currently lacks specific regulation of compressed natural gas (CNG) facilities; and

WHEREAS, in 2017, the Rye City Planning Commission approved an application for the temporary seasonal operation of a CNG facility for a property regulated as a utility use in the City's B-6, General Business, District for an initial term of one year ending on April 30, 2018; and

WHEREAS, the applicant told the City that there was an immediate need for additional supply for its firm gas customers in the winter season of 2017 to 2018 and that if it could not be installed, there would be an adverse impact to Rye residents; and

WHEREAS, the applicant assured the City that the CNG facility was only needed on a temporary basis to allow sufficient time for a more permanent pipeline solution; and

WHEREAS, in 2018, prior to the expiration of the original approval, the applicant returned to the Planning Commission and the Planning Commission granted a modification to the original site plan approval to allow the CNG Facility to remain and operate for two additional winter seasons until April 30, 2020; and

WHEREAS, the approval expired on April 30, 2020; and

WHEREAS, the applicant has indicated its intent to apply for a new and longer approval for the same or a similar facility; and

WHEREAS, the City needs time to consider whether a CNG Facility or other similar type of facility is appropriate for use or operation in the City of Rye and if so, what, if any, amendments to the City's Code would be necessary to regulate a relatively new kind of facility that was never contemplated by existing laws and regulations; and

WHEREAS, the City Council has determined that it is appropriate to review the City's existing regulations relating to the storage and use of hazardous substances to ensure that such activity does not negatively impact the City, including without limitation, the public health and safety, and quality of life of its residents and businesses and to study whether there is a more environmentally sustainable alternative; and

WHEREAS, in reviewing its existing regulations, the City may have to retain engineering professionals or other consultants to better understand issues related to these uses, analyze the potential impacts to existing infrastructure, investigate the potential demands placed on the City's emergency services and consider the short and long term cumulative impacts, among other things.

WHEREAS, as a result of the Governor's Executive Orders related to COVID-19, regulations in place regarding public gatherings and business closures, and to ensure the health and safety of the City's residents, the City expects that it may require up to twelve months to consider the aforementioned issues.

NOW, THEREFORE, Be It Enacted by the City Council of the City of Rye as follows:

Section 1. Findings and Purpose.

The City of Rye Zoning Code's B-6 General Business District allows storage yards and the City Council wishes to review whether the CNG Facility or other similar large public utility distribution uses and infrastructure are appropriate in the B-6 zone. The goals of the City Council include, but are not limited to, the overall health, welfare and safety of its residents, whether this type of use is consistent with reducing the City's carbon footprint, whether such use disrupts aesthetic considerations of the land, property, buildings, and other facilities in the area, and whether the hazards and other safety concerns associated with this type of use can be properly mitigated.

Section 2. Enactment of Moratorium. Prohibited Actions.

For a period of twelve months from the effective date of this local law, the City Council hereby declares a moratorium prohibiting the following actions in the City, regardless of the submittal or receipt of any application prior to the effective date of this local law:

- A. Acceptance, consideration, preliminary approval or final approvals by the City Planning Commission of any application for site plan or special permit approval for new or modified public utility infrastructure including, without limitation, pipelines, storage containers (including storage of containers within vehicles), pipes, mains, and conduits that is associated with the public utility infrastructure.
- B. Acceptance, consideration, preliminary approval or final approval, or interpretation by the City of Rye Board of Appeals in connection with any activity prohibited herein.

- C. The issuance of any permits by the City of Rye Building Department, City of Rye Fire Department or City Engineer in connection with any activity prohibited hereunder.

Section 3. Appeals/waiver.

- A. An aggrieved property owner may apply to the City Council for a waiver and the City Council shall have the discretion to grant such waiver, or as much relief as said Council may determine to be necessary and appropriate. In determining the suitability of a waiver under this section, the City Council shall consider the following factors:

1. Unnecessary hardship to the petitioner, which hardship is substantially greater than any harm to the general public welfare that would result from the granting of the waiver. The property owner shall have the burden of demonstrating to the City Council that a waiver is warranted due to substantial hardship and that such substantial hardship was not the result of an act or omission by the applicant or property owner. In considering this factor, the City Council may request information regarding alternatives that the Applicant has considered or whether there are additional long-term plans; and
2. The project's harmony (or lack thereof) with the existing character of the community as a whole and the area of the community in which the property is located; and
3. Whether the application for which the relief is requested is consistent with any interim data, recommendations, or conclusions which may be drawn at the time of the public hearing from the aforementioned review and study; and
4. Whether the applicant is in compliance with all other City Code requirements with respect to its City's operations; and
5. Whether the application for which the relief is requested is consistent with any proposed regulations, if and as such may exist at the time of the public hearing.

- B. Waiver procedure. Such petition shall be the subject of a public hearing before the City Council. Upon submittal of a written petition to the City Clerk by the property owner or applicant seeking a waiver of this moratorium, and supported by such documentation as the applicant deems relevant, the City Council shall, within sixty (60) days of receipt of such petition, conduct a public hearing on said petition upon five (5) days public notification in the official newspaper of the City. The City Council shall, within thirty (30) days of the close of the hearing, render its decision in writing, either granting or denying the petition.

- C. It shall be within the discretion of the City Council to grant, in whole or in part, grant with conditions, or deny, the petition for relief from the terms of this moratorium. In

granting a waiver, in whole or in part, the City Council must find that the waiver will not adversely affect the purpose of this Local Law.

**Section 4. Early Termination or Extension of this Local Law**

In the event any new Local Law which addresses the substantive issues set forth herein, should be enacted and adopted by the City Council prior to the date that the moratorium imposed by this Local Law expires, then in that event, the moratorium imposed by this Local Law shall expire on the date such new Local Law takes effect in accordance with § 27 of the Municipal Home Rule Law.

In like manner, if more than 12 months have passed since the implementation of this Local Law, and it shall be determined by a finding of the City Council that an extension of this moratorium is required, then the City Council by resolution, may extend this moratorium for such a period of time as it deems necessary in order to further the purposes of this law up to and including an additional 180 days from the date of the original expiration of this Local Law.

**Section 5. Conflicts with State Statutes and Authority to Supersede**

A. To the extent any provisions of this Local Law are in conflict with or are construed as inconsistent with the provisions of New York State Law, this Local Law shall control. The City Council adopts this local law pursuant to authority in the New York State Constitution, Article IX, Section 2; Section 10 of the New York State Municipal Home Rule Law; Section 10 of the Statute of Local Governments; the relevant provisions of the General City Law of the State of New York; and the general police power vested with the City of Rye to promote the health, safety and welfare of all residents and property owners in the City.

B. During the time that this law is in effect, it shall take precedence over and shall be considered controlling over contrary laws, ordinances and provisions. It is the intent of the City Council, pursuant to its authority under section 10, subdivision 1(ii)(d)(3), and section 22 of the Municipal Home Rule Law, to supersede inconsistent provision of the New York State General City Law and the City of Rye Zoning Code.

- a. In particular, it is the intent of the City Council, pursuant to authority under Sections 10 and 22 of the Municipal Home Rule Law, to supersede inconsistent provisions of the New York State General City Law and the City of Rye City Code relating to the time limits in connection with zoning and planning determinations and with respect to the jurisdiction and authority of the Board of Appeals with respect to hearing variances or waivers related to this local law.

Section 6. Severability

If any part of this Local Law is deemed by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder of this Local Law.

Section 7. Effective Date

This Local Law shall take effect immediately upon filing with the New York Secretary of State.



# CITY COUNCIL AGENDA

DEPT.: City Manager

DATE: May 13, 2020

CONTACT: Greg Usry, Interim City Manager

**AGENDA ITEM:** Authorization for the City of Rye School District to use the City streets on May 31, 2020 from 2:00 PM – 4:00 PM for a graduation vehicle parade to acknowledge and celebrate the Class of 2020.

**FOR THE MEETING OF:**  
May 13, 2020

**RECOMMENDATION:** That the Council authorize the use of City streets for the parade.

**IMPACT:** Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:** Due to COVID-19, RCSD cannot hold its annual graduation as planned.

**Rye High School**  
**Class of 2020**  
**Graduation Car Parade**

**Proposed Route**

Gathering Point for Vehicles: Rye Playland Parking Lot

1. Left turn onto Forest Avenue
2. Right turn onto Valleyview Avenue
3. Right turn onto Fairway Avenue
4. Left on Hewlett Avenue
5. **PASS MILTON SCHOOL**
6. Right on Milton Avenue
7. Left on Oakland Beach Avenue
8. **PASS OSBORN SCHOOL**
9. Right on Theall Road
10. Right on Playland Access Drive
11. Left onto Playland Parkway
12. Left onto Midland Avenue
13. **PASS MIDLAND SCHOOL**
14. Left on Grace Church Street
15. Enter Fireman's Circle
16. Exit Fireman's Circle onto Milton Avenue
17. Right onto Parsons Street
18. **PASS RYE HIGH SCHOOL and RYE MIDDLE SCHOOL**
19. Left onto Boston Post Road
20. Left onto Playland Parkway
21. Return to Rye Playland where car parade will end