

# CONSERVATION EASEMENT STUDY

Village of Rye Brook, New York



Prepared for:  
MAYOR FRANCIS L. FILIPOWSKI &  
THE VILLAGE BOARD OF TRUSTEES

Prepared by:  
FREDERICK P. CLARK ASSOCIATES, INC.  
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February 2004

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# **CONSERVATION EASEMENTS STUDY VILLAGE OF RYE BROOK, NEW YORK**

Prepared for Mayor Francis L. Filipowski and the  
Board of Trustees of the Village of Rye Brook  
by Frederick P. Clark Associates, Inc.  
Planning/Development/Environment/Transportation

## **A. Introduction**

Today many communities are struggling with the dilemma of how to balance growth with preservation of the character and sense of place that makes their community unique. Elected officials and residents of the Village of Rye Brook identified preservation of community character as a worthy goal, and in their Vision Plan, set out to devise appropriate recommendations to protect certain natural and man-made resources. These “resources” include remaining open space, open space vistas, roads with scenic character, artifacts such as stone walls or gates, and specific significant properties.

Although the resources have varying characteristics, the one distinction they all share is their cumulative contribution to the visual and spatial character of the Village of Rye Brook. As requested by the Board of Trustees, Frederick P. Clark Associates, Inc. has analyzed ways to incorporate zoning amendments into the Village Code to preserve these qualities. The regulations proposed in this document are consistent with the goals and objectives of the December 2000 Village of Rye Brook Vision Plan.

This report presents the results of our analysis of the applicability of conservation easement legislation in the Village of Rye Brook. The report recommends specific additions to the Zoning Code to:

1. Amend Chapter 250, Zoning, to add new Scenic Roads Overlay Districts to preserve Anderson Hill Road and King Street, north of the Hutchinson River Parkway.
2. Enable the Board of Trustees or property owners to place conservation easements on specific parcels of land.

In addition, we suggest the Board of Trustees consider expanding the Scenic Roads Overlay Districts to certain other roads in the Village.

The report includes the following appendices, which contain additional information and support documents for the text.

- Appendix A: photographs of areas studied.
- Appendix B: maps of proposed Scenic Road Overlay Districts.
- Appendix C: annotated model conservation easement.

A draft of a proposed local law amending Chapter 250 of the Village Code is attached in Appendix D.

## **B. Conservation Easements**

### 1. What is a Conservation Easement?

"The right to occupy, use, lease, sell, and develop land are all rights inherent with property ownership. An easement involves the surrender or exchange of one or more of these rights from the landowner to an outside party who in turn "holds" the easement." <sup>1</sup>

An easement is normally described in terms of the resource it is designed to protect. Conservation easements are designed to protect natural features by limiting or excluding specific activities on private land, such as residential subdivisions, commercial uses, road construction, or disturbance of vegetation or topography.

They are commonly used to protect scenic landscapes or vistas, principally those with local community, cultural or historic significance. For example, an easement preserving rare woodland habitat may require that the property be left entirely in its natural state, prohibiting all development. To protect a lake or stream, an easement may allow limited inland construction of buildings while preserving the shoreline.<sup>2</sup> In reference to the Village of Rye Brook, conservation easements may complement efforts to protect scenic vistas, preserve open space or protect waterways.

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<sup>1</sup> 1998. Shear P. & Blaine T. Conservation Easements- OhioLine Land Use Series- via [www.ohioline.osu.edu/lines/facts.html](http://www.ohioline.osu.edu/lines/facts.html)

<sup>2</sup> 2002. Minesota Land Trust- "What are Conservation Easements?" [www.mnland.org/index.htm](http://www.mnland.org/index.htm)

Conservation easements may be donated, sold at full-market value, or sold at below-market value by the owner of the land. If donated, or sold at below-market value, the landowner may qualify for an income tax deduction in the year of the donation or sale. By creating a conservation easement, the land may qualify for a lower estate tax valuation on the death of the owner, thereby reducing the tax burden on the beneficiaries. Similarly, the local property tax assessments may be lowered, benefiting the landowner on an annual basis thereafter.

## 2. Who holds an Easement?

Since the easement is generally granted in perpetuity, it is necessary for an outside party to be responsible for monitoring and maintenance of the easement. The outside party “holds” the easement and is required to monitor and enforce adherence by current and future property owners to the terms of the easement.

The outside party may be a “land trust,” or a municipality. Typically land trusts prefer to hold easements on large tracts of land. A municipality may hold small land easements on parcels or easements on portions of properties such as those preserving vegetative buffers.

### i. Land Trusts

A non-profit land trust works to preserve open space by holding conservation easements. Under contract with local government, a land trust may agree to serve as a vehicle for the negotiation, acquisition, holding and enforcement of easements agreed to by, or imposed on, landowners as part of the development review and approval process.<sup>3</sup> The benefits of utilizing the land trust option include stewardship and monitoring; most land trusts employ a full-time land monitor to assure the easements are protected and the agreements are met.<sup>4</sup>

### ii. Municipal Enforcement Options

A municipality may decide to hold conservation easements and therefore act as a land trust. As would an “official” land trust, the municipality would then draft appropriate easement language, recordation methodology (conservation easements are recorded on county land records and filed with the Department of Environmental Conservation). In addition, a monitoring and enforcement plan would be developed.

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<sup>3</sup> 2004. Pace Land Use Law Center. “Conservation Easements and Land Trusts.” Series III: Innovative Tools and Techniques, Issue Number 11.

<sup>4</sup> 31 December 2003. Phone conversation w/ Paul Gally, Executive Director of the Westchester Land Trust.

iii. Co-Easement Agreements

Many communities work closely with land trusts and establish co-easement agreements. In this situation, a private land trust is the lead easement holder with the municipality as the back-up designee. If, for unforeseen circumstances, the land trust is dissolved, the municipality ensures continuity in enforcement.

**C. Study Methodology**

1. *Identification of issues.* To develop a clear understanding of the issues and a representative sampling of sites containing the resources to be addressed in the study, we consulted with Village staff, reviewed plans and aerial photos of existing residential properties, in addition to touring the Village looking for elements in the landscape that may be worthy of preservation. We found these resources to include roads with rural and scenic character, stone walls, gates, other isolated artifacts contributing to visual interest in the Village and specific unique properties that provide open space or allow access to or protection for natural resources.
2. *Analysis of current regulations.* To create a basis for comparison of existing and proposed regulations in Rye Brook, we reviewed and analyzed model conservation easement regulations and the Scenic Roads Overlay Districts in the Towns of Hamptonburgh, the Village of Old Brookville, the Town of Stamford and the Town of Bedford. In addition, we studied existing setback distances for developed properties along specific roads within the Village of Rye Brook.
3. *Analysis of changes to the Zoning Code.* To test suggested changes to the Village Code such as the addition of a Scenic Roads Overlay District or conservation easement regulations, we studied the potential impact these regulatory measures would have on a representative sampling of properties along Lincoln Avenue and King Street, north of the Hutchinson River Parkway.
4. *Recommendations for amendment of the Zoning Code.* An analysis of various possible changes to the Zoning Code was used to guide the selection of appropriate controls and the drafting of a proposed amendment to the Code for consideration by the Village Board of Trustees, the Village Planning Board and the Village staff and consultants.

## **D. Analysis of Existing Conditions**

### 1. Roads

The following sections of road have been identified in the Rye Brook Vision Plan as having special and distinct scenic qualities essential to preserve:

- King Street, north of the Hutchinson River Parkway
- Anderson Hill Road

During our review of the major public roads in the Village, we discovered other roads that may also be worthy of preservation. They are:

- Lincoln Avenue, from Westchester Avenue to the Blind Brook
- Bowman Avenue, from North Ridge Street to the Blind Brook
- Westchester Avenue/Route 120A, from North Ridge Street to the Blind Brook
- North Ridge Street, from the Hutchinson River Parkway to Ridge Boulevard

The results of analysis of existing conditions along these sections of road, described in *Table 1, Scenic Characteristics of Rye Brook Roads*, reveal that relics of historic uses such as agriculture and rural estates remain in place throughout the village, contributing to visual character and a historic sense of place. A variety of rock and stone walls, gates and entry piers mark the locations of previous uses. Protection of these elements enriches the landscape and preserves part of the cultural history of the village.

Rock outcrops, watercourses, ridges and wetlands are unique natural features that add to the picturesque quality of roads and open space throughout the village. Natural features along with the vegetation that typically exists in the habitats the features create give the landscape of Rye Brook its “New England” character, a resource worthy of preservation.

All the sections of roads and streets we identified as candidates for protection have significant concentrations of cultural and natural features. There may be additional isolated artifacts or scenic resources on other streets that should also be preserved.

**Table 1 – Scenic Characteristics of Rye Brook Roads**

Road Section	Description
King Street, north of the Hutchinson River Parkway	Tree-lined corridor with old stone walls and gates running the length of the west side of the street. Many homes are buffered by old-growth trees and are not visible from the street.
Anderson Hill Road	There are pockets of residential and recreational development along this road - Doral Greens and the Blind Brook Country Club and undeveloped parcels and areas of open space.
Lincoln Avenue, south of Jennifer Lane	Most of this portion of the avenue is built-out with homes located at the minimum front-yard setback. A few stone walls remain, as do a small number of developable parcels.
Lincoln Avenue, north of Jennifer Lane	Characterized as a tree-lined corridor, this section contains a variety of stone walls and old-growth tree stands. Most homes exceed the minimum front-yard setback requirements.
Bowman Avenue, North Ridge Street to Blind Brook	There are various undeveloped parcels along this section of road. In addition, there are significant rock out-crops. Properties along the north side are buffered by stone walls.
Westchester Avenue, North Ridge Street to Blind Brook	Although a short section of road, there is substantial rock outcropping and presence of stone walls.
North Ridge Street, Hutchinson Parkway to Ridge Boulevard	This section is bordered by stone walls running the length of the west side of the road, which are almost entirely uninterrupted.

NOTE: The following should be kept in mind when reviewing accompanying tables and photographs:

1. The measurements are relative and approximations are only as accurate as the data layers and measuring tool, but general trends can be discerned.
2. Property owners' names have been omitted for reasons of privacy.

## 2. Properties

Natural and cultural resources worthy of protection exist, as isolated artifacts, throughout the Village. Watercourses, such as Blind Brook and its east branch, have sections that

continue to exist in a natural state. Areas of natural woodland and wetlands protect and preserve the scenic and environmental quality of the watercourse, adding to the character of the Village landscape. A property, privately or publicly owned and adjacent to the Blind Brook, for instance, might be considered for protection that would help preserve the wild character of the watercourse by limiting future development on the parcel and protecting woodlands.

Rich Manor Park has already been designated by the County, and indirectly, by the Federal government, as having significant environmental resources that should be preserved and protected. Rich Manor Park is part of the environmentally sensitive and significant area that borders the East Branch of the Blind Brook. Its vicinity to the Blind Brook affords residents and visitors views of the water body and the park provides valuable open space.

Providing additional protection, through the application of conservation easements within the park along the banks of the Blind Brook would compliment the County's efforts by limiting development and would preserve the ability of the park to protect the stream.

Likewise, property that contains a significant natural or planted stand of trees or one with open space that is part of the view corridor for a scenic vista may also be protected as features that contribute to landscape and spatial character.

## **E. Conclusions**

Based upon our research and analysis, as well as our experience in other Westchester County towns and villages, it is our opinion that Rye Brook contains unique landscape elements, both cultural and natural, that are vestiges of its rural past and which contribute to the character of the village and the quality of life of its residents. Furthermore, future development may put natural and cultural resources in danger of being lost if not protected.

The presence of developable lots along the roads studied increases the potential for the destruction of stone walls and the loss of mature landscapes that create scenic views and buffer existing development on properties. Historic stone walls and architectural details such as piers and gates are in danger of removal due to subdivision or renovation. The character of watercourses, woodlands, and open space can also be altered or lost through development.

In order to help preserve these resources, it is important to monitor and guide development in areas of unique character. It is our opinion that establishment of certain roads as scenic corridors will help protect significant concentrations of resources, ensuring and maintaining the visual quality and spatial characteristics of the Village. By

enabling a property owner or the Board of Trustees to apply conservation easements to a specific property, natural resources and cultural artifacts may be preserved.

Isolated cultural and natural resources may be protected by the application of conservation easements on the properties on which they are located. There may be privately owned property within the Village on which the property-owner or the Board of Trustees may want to place a conservation easement to protect a scenic or natural resource or to preserve open space.

## **F. Scenic Road Overlay Districts**

Within a scenic road overlay district new regulations, such as increased setbacks and conservation easements, may be imposed that will help to protect natural and man-made resources on properties.

Our analysis of existing front-yard setbacks revealed that newer homes in the areas we studied (See Maps 1 and 2 in Appendix B) tend to be built at the minimum front-yard setback requirement for the zoning district. Therefore, a new house is more likely to be closer to the road than its neighbors, reducing the depth of the front yard and consequently breaking a corridor’s spatial continuity. Likewise, parking or vehicular drop-off areas for newer homes are located at the minimum 25-foot setback from the front property line, placing them in full view from the street.

Tables 2 and 3 show that the current minimum setback requirements for the zoning districts along King Street and Lincoln Avenue are much less generous than average pre-zoning code setbacks at which an older house is more likely to be located. The deeper setbacks of older homes give a road or street a more rural spatial character.

**Table 2 – Average Existing Front Setback Distances for King Street**

District	Average <b>Existing</b> Front Setback Distance	Minimum Setback Required by Code
R-15	45.4 Feet	40 Feet
R-20	89.4 Feet	40 Feet

**Table 3 – Average Existing Front Setback Distances for Lincoln Avenue**

District	Average <b>Existing</b> Front Setback Distance	Minimum Setback Required by Code
R-10	45.8 Feet	30 Feet
R-12	88.2 Feet	35 Feet

The minimum setbacks required in the R-10, R-12, R-15 and R-20 zoning districts leave insufficient space for adequate landscape buffers and tend to favor the removal of woodlands and existing artifacts such as stone walls located near the front property line. Increasing minimum front yard setbacks will move houses back sufficiently to provide front yard open space and preserve or add a landscape buffer at the front property line that is deep enough to provide room for dense plantings and to preserve existing woodlands and artifacts such as stone walls. Parking should be located beyond the landscape buffer close to the residence.

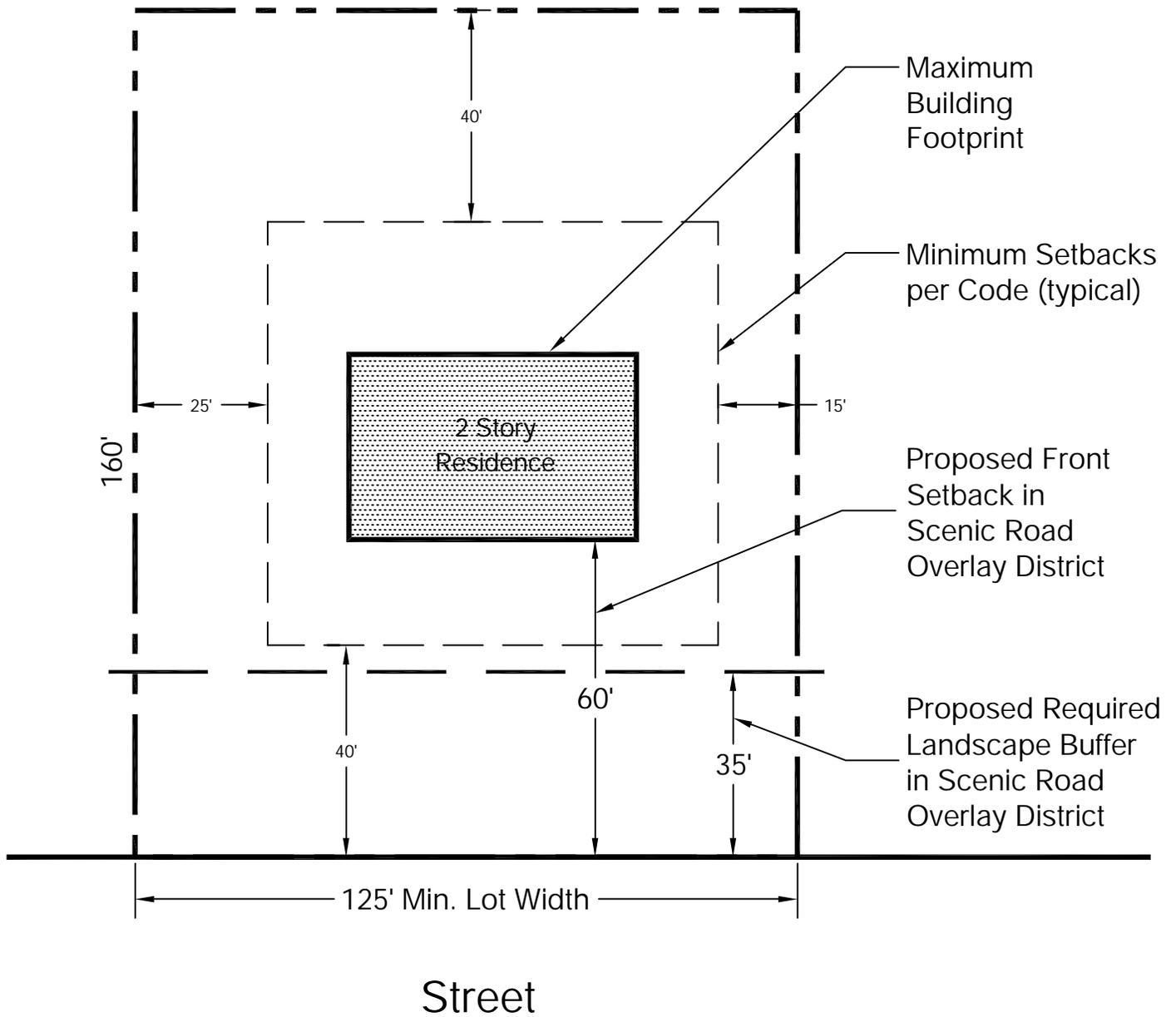
Figures 1 through 4 illustrate increased minimum front-yard setback requirements and landscape buffers protected by conservation easements on minimum-sized lots in the R-10, R-12, R-15 and R-20 zoning districts. The minimum setbacks have been increased by a factor of 1.5 and a 35-foot deep conservation easement for a landscape buffer has been applied along the front property line. The Height/Setback requirements of the underlying zoning district would not apply in a scenic roads overlay district because the increased setback is greater than what would be required by the Height/Setback Ratio.

To assure that development is consistent with the goal of maintaining the existing scenic character of roads, neighborhoods or natural and man-made resources to the greatest extent practicable, we recommend the following should be incorporated into Scenic Roads Overlay District regulations:

1. Findings

- a. That the character of a scenic road is a critical feature of the Village of Rye Brook whose preservation enriches and benefits the quality of life experienced by its residents;
- b. That it is desirable to protect and preserve scenic views as well as sensitive natural and man-made features on a Scenic Road and elsewhere in the Village such as, but not limited to, stone walls, historic architectural elements, geological formations, watercourses and significant vegetation;

# SCENIC ROADS OVERLAY DISTRICT PROPOSED SETBACKS & BUFFERS IN R-20 DISTRICT ON A HYPOTHETICAL LOT



Minimum Lot Area	20,000 Sq. Ft.
Maximum Gross Floor Area	3,796 Sq. Ft.
Existing Minimum Front Yard Setback	40 Ft.
Proposed Minimum Front Yard Setback	60 Ft.

CONSERVATION EASEMENTS STUDY  
Village of Rye Brook, New York

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Planning/Development/Environment/Transportation

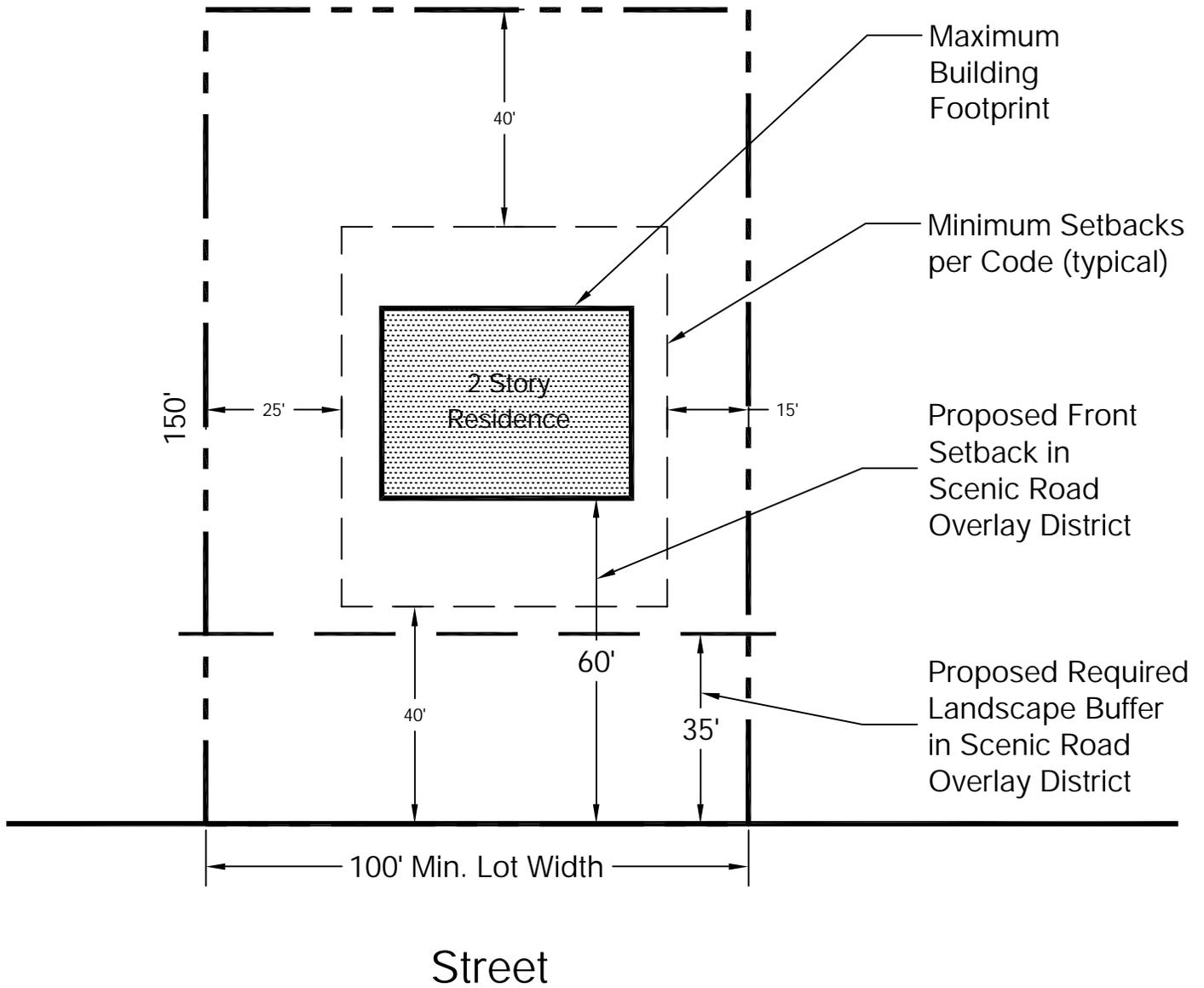
Scale in Feet

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2/13/04

# SCENIC ROADS OVERLAY DISTRICT PROPOSED SETBACKS & BUFFERS IN R-15 DISTRICT ON A HYPOTHETICAL LOT



Minimum Lot Area	15,000 Sq. Ft.
Maximum Gross Floor Area	3,222 Sq. Ft.
Existing Minimum Front Yard Setback	40'
Proposed Minimum Front Yard Setback	60'

CONSERVATION EASEMENTS STUDY  
Village of Rye Brook, New York

FREDERICK P. CLARK ASSOCIATES, INC.  
Planning/Development/Environment/Transportation

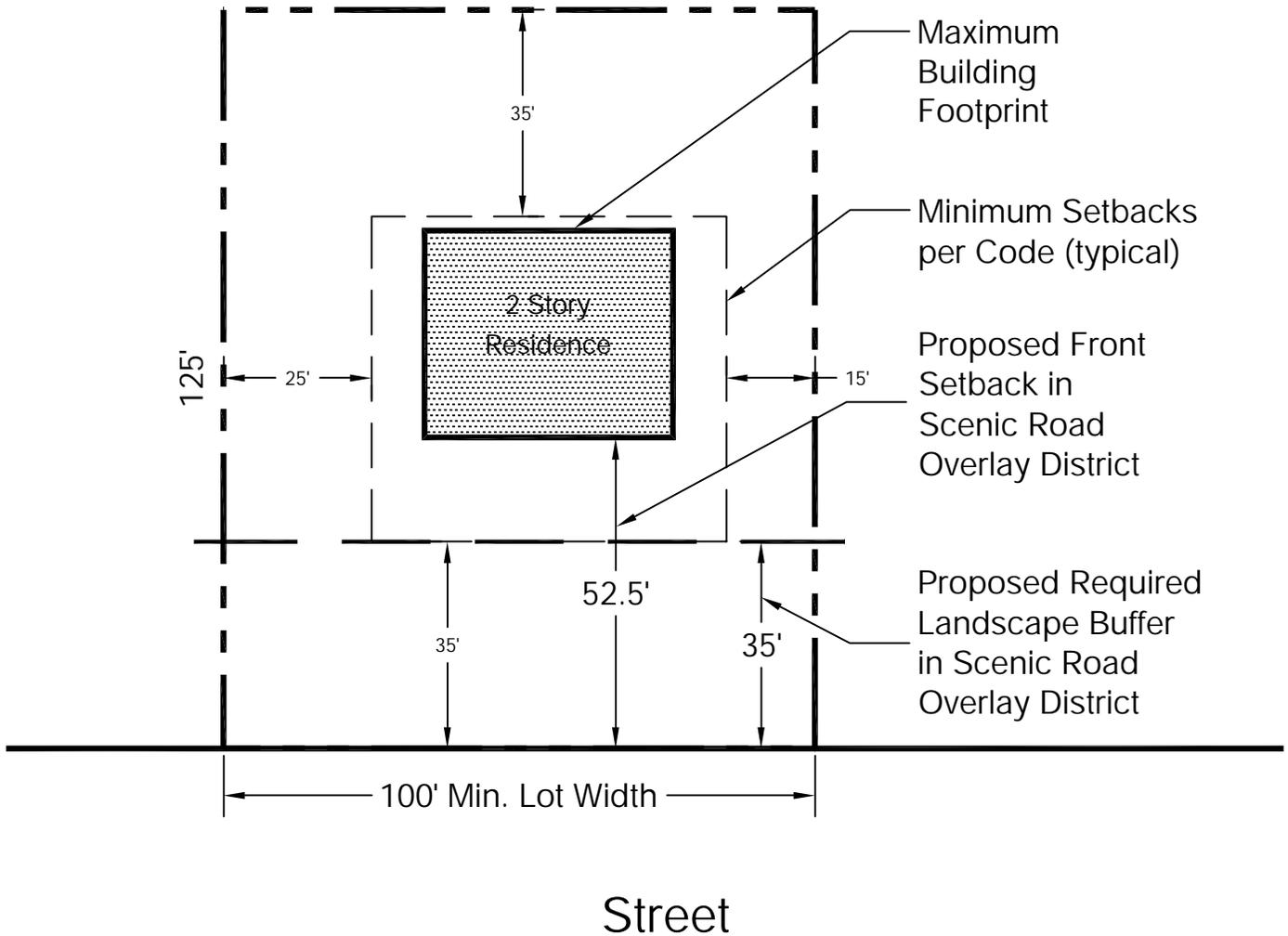
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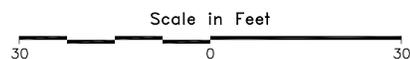
# SCENIC ROADS OVERLAY DISTRICT PROPOSED SETBACKS & BUFFERS IN R-12 DISTRICT ON A HYPOTHETICAL LOT



Minimum Lot Area	12,500 Sq. Ft.
Maximum Gross Floor Area	2,935 Sq. Ft.
Existing Minimum Front Yard Setback	35 Ft.
Proposed Minimum Front Yard Setback	52.5 Ft.

## CONSERVATION EASEMENTS STUDY Village of Rye Brook, New York

FREDERICK P. CLARK ASSOCIATES, INC.  
Planning/Development/Environment/Transportation





- c. That new development and redevelopment in the Village should be designed so as to not diminish scenic landscapes and natural areas along these corridors and throughout the Village and should be reviewed for appropriate design and compatibility with the goal of the Scenic Roads District by the Architectural Review Board, Planning Board and Tree Preservation Committee;
- d. That preservation of these features, while providing for appropriate development, can only be achieved by encouraging flexibility in the design of land use and development projects; and
- e. That landscape planning should be an integral component of all subdivision and site plan reviews.

2. Plan Review within Scenic Roads Overlay District

In order to preserve and enhance the Village's existing scenic resources, it is recommended that no new permitted use within any residential, business or commercial district may be constructed within the Scenic Roads Overlay District without first obtaining site plan approval from the Board of Trustees. For such instances when approval by the Board of Trustees is not considered necessary (accessory uses, minor structures, or minor renovation of existing structures), it must be clearly established that the use, building or structure will not impact existing trees, historic stone walls or other natural or man-made features that are protected features and that the use, building or structure cannot be viewed from any roadway and or public area.

Before granting overlay plan approval, the Board of Trustees should be satisfied that:

- a. The structure or alteration is architecturally compatible with surrounding structures and that the important scenic and natural features of the site will be preserved.
- b. The minimum front-yard setback requirement for all structures, as set forth for the underlying zoning district shall be increased by a factor of 1.5. Within the setback a 35-foot wide conservation easement adjacent to and running the length of the front property line shall be applied for installation or maintenance of protected landscape planting buffer and the protection of natural or man-made artifacts.
- c. The front yard shall be managed by the property owner in a way that preserves significant existing vegetation, plant specimens, landforms and water features; nurtures tree planting and other natural landscaping efforts; creates dense

landscaping buffers; preserves stone walls or historic architectural features; and/or ensures the protection of visual buffers.

Where existing trees and vegetation are proposed to be removed, or are damaged or killed by construction activities, sufficient landscaping and trees will be installed to mitigate visual impacts and the loss of existing vegetation.

- i. Use of native species shall be encouraged.
  - ii. Landscape and plantings shall be used to screen structures visible from the road. Trees should be planted in random clusters, not in rows, to complement the appearance of natural tree stands. The relative heights of trees at planting should be proportional to their relative heights at maturity.
  - iii. No cutting of trees exceeding 12 or more inches DBH, in accordance with Chapter 235 of the Village Code shall be allowed.
- d. Existing stone walls, gates, and entrance piers will be preserved and incorporated into development plans. If new stone walls are to be erected, they will mirror, as closely as possible, existing masonry, stone type and height.
  - e. Any new utility equipment installed within a scenic road right-of-way road shall be adequately screened so as to insure that the character and continuity of the road is not compromised.
  - f. Parking areas shall not be located in protected landscape buffers and shall be placed so as to minimize encroachment upon areas and terrain which have qualities of natural beauty.
  - g. Any grading or earth moving operation shall be conducted so that the final, post-development contours appear to be consistent with pre-development terrain, both on and adjacent to building sites.

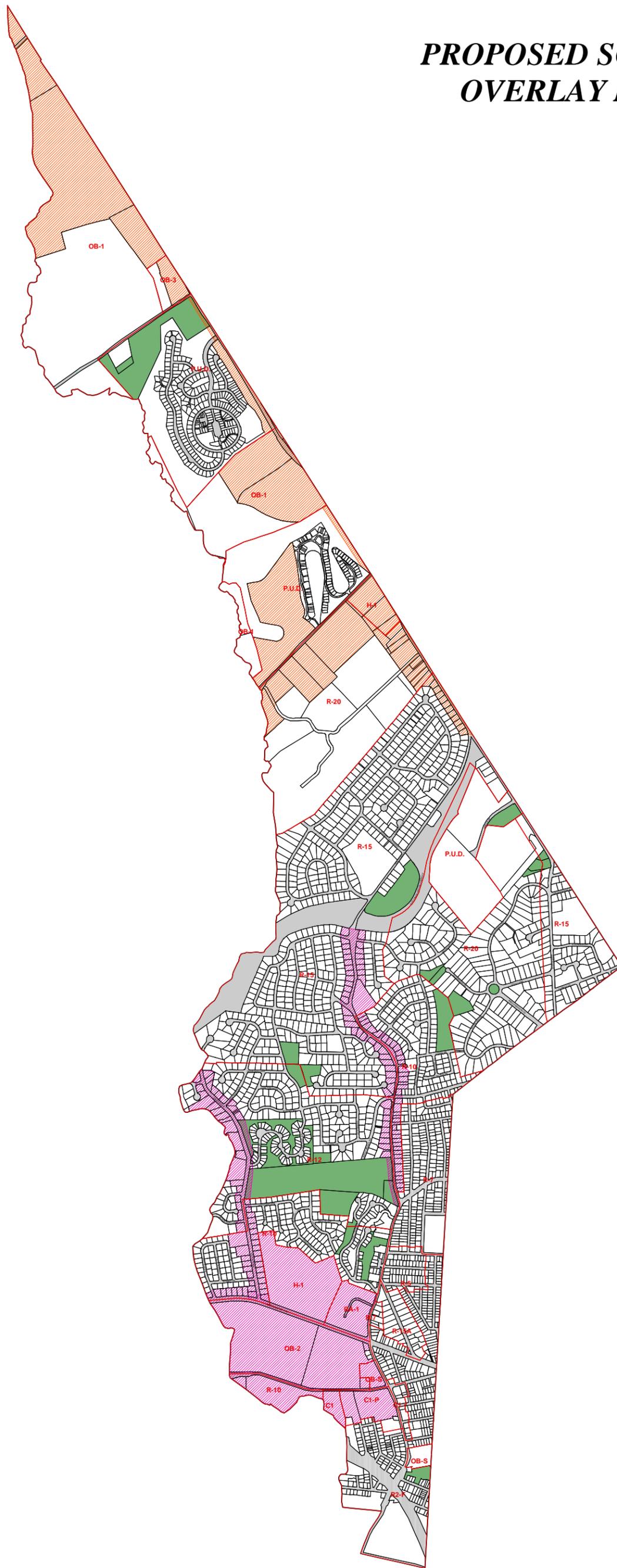
## **G. Recommendations**

We submit the following recommendations to the Village Board of Trustees based upon our research and analysis, our review of the Village of Rye Brook Zoning Code, and our professional judgment.

1. Amend Chapter 250, Zoning, to add a new Scenic Roads Overlay District to preserve Anderson Hill Road and King Street (North of the Hutchinson River Parkway); and
2. Consider applying the Scenic Roads Overlay District to the additional road sections listed in Table 1, particularly Lincoln Avenue; and
3. Apply conservation easements on a case-by-case basis to properties in the overlay districts and elsewhere in the Village, from time to time, as deemed appropriate and necessary by the Village Board of Trustees.

**APPENDIX A – STUDY AREA PHOTOGRAPHS (NOT AVAILABLE IN WEB SITE VERSION. CONTACT THE VILLAGE HALL FOR THE PICTURES.)**

# PROPOSED SCENIC ROAD OVERLAY DISTRICTS



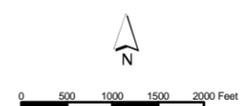
Village of Rye Brook  
Westchester County, New York

Data Sources: Building Footprints (Village of Rye Brook, as Amended by FPCA), parcel boundaries (Village of Rye Brook, 1999, as Amended by FPCA)

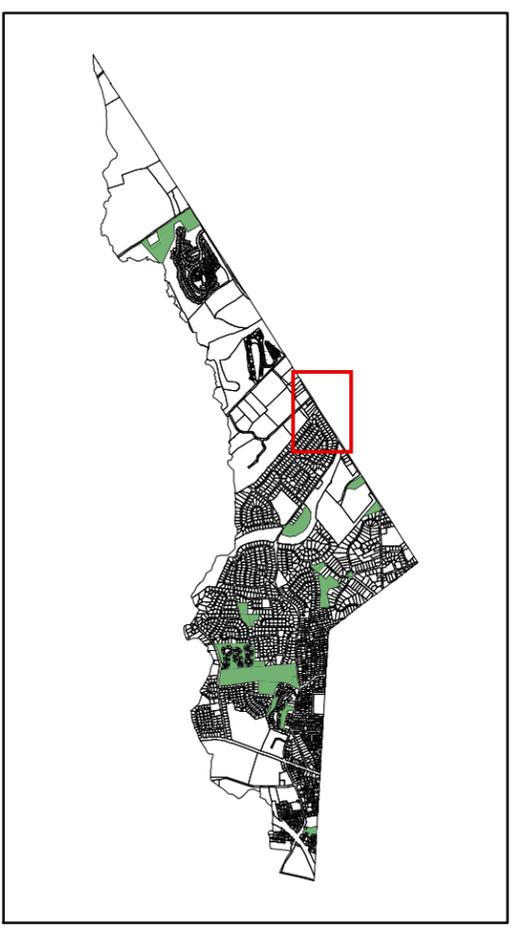
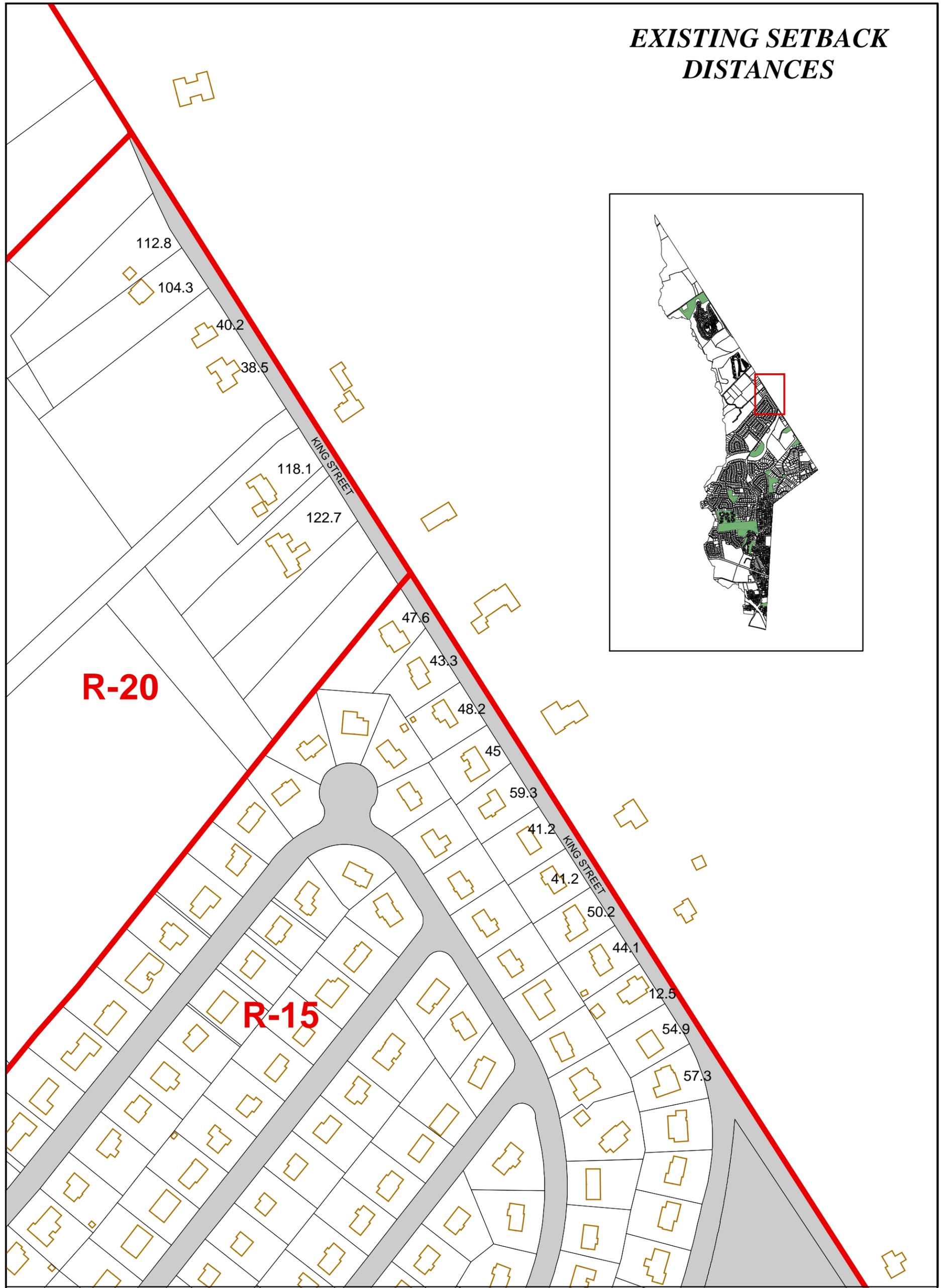
**Legend**

- Zoning Districts
- Parcel Boundaries
- Village Boundary
- Scenic Roads Identified in 2000 Vision Plan
- Additional Scenic Roads for Consideration
- Parks and Open Space
- Road Right-of-Way

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*Planning/Development/Environment/Transportation*



# EXISTING SETBACK DISTANCES



**R-20**

**R-15**

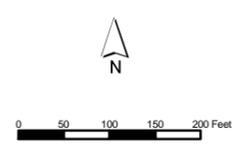
**King Street**  
 Village of Rye Brook  
 Westchester County, New York

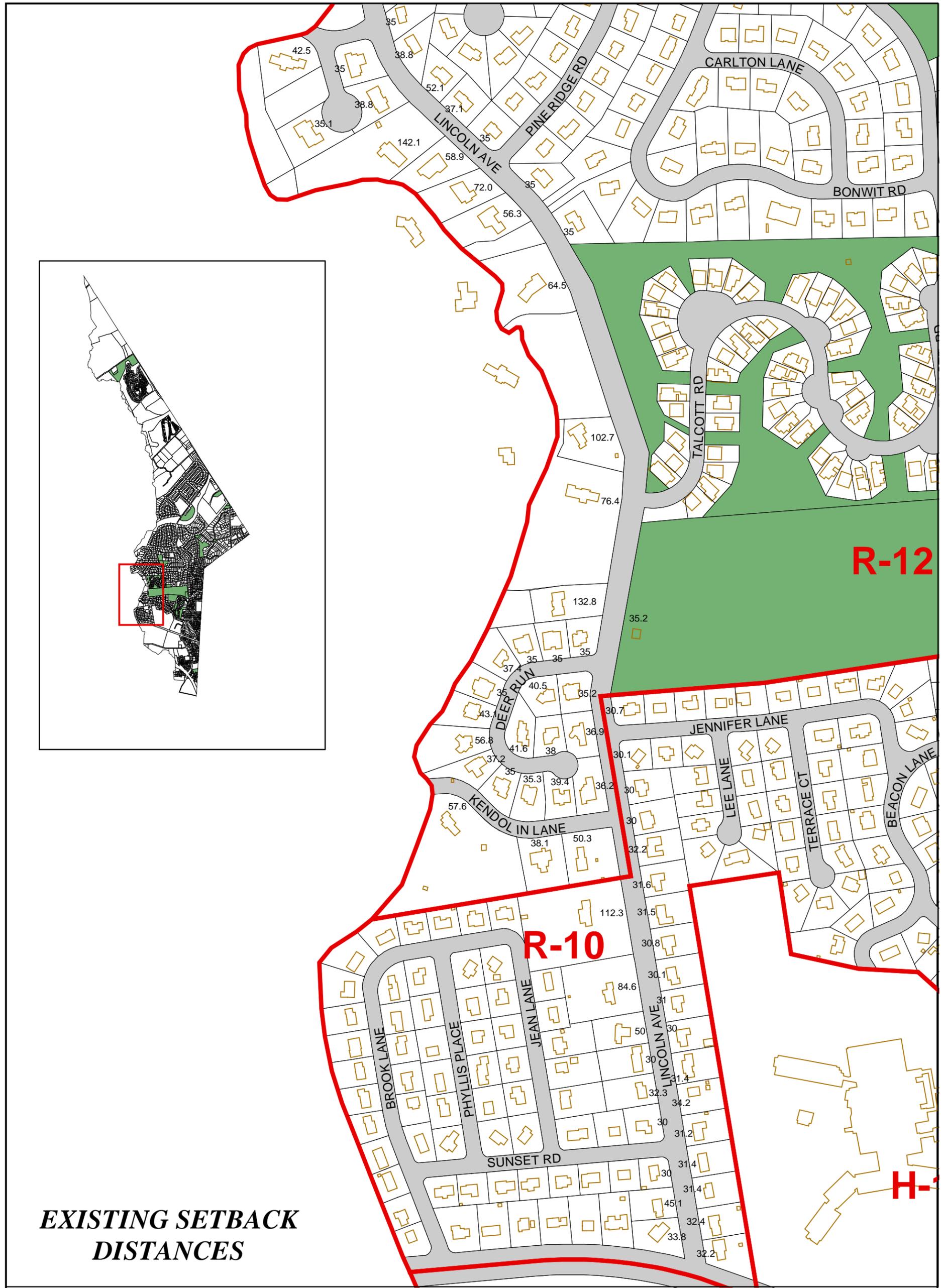
Data Sources: Building Footprints (Village of Rye Brook, as Amended by FPCA), parcel boundaries (Village of Rye Brook, 1999, as Amended by FPCA)

**Legend**

- Zoning Districts
- Village Boundary
- Village-Owned Lots
- Parcel Boundaries
- Building Footprints
- Parks and Open Space
- Road Right-of-Way

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**EXISTING SETBACK DISTANCES**

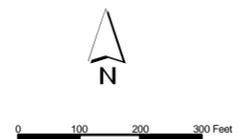
**Lincoln Avenue Corridor**  
 Village of Rye Brook  
 Westchester County, New York

Data Sources: Building Footprints (Village of Rye Brook, as Amended by FPCA), parcel boundaries (Village of Rye Brook, 1999, as Amended by FPCA)

**Legend**

- Zoning Districts
- Village Boundary
- Parcel Boundaries
- Road Right-of-Way
- Parks and Open Space
- Building Footprints

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## MODEL CONSERVATION EASEMENT

This conservation easement agreement is made this \_\_\_\_ day of \_\_\_\_\_, 2004, between Grantor's name having an office Grantor's address, hereinafter called the "Grantor", and the Westchester Land Trust, Inc., a New York not-for-profit corporation with its offices located at 31 Main Street, Bedford Hills, New York 10507, hereinafter called the "Grantee".

**WHEREAS** the Grantor, owner in fee of real property located in the Town of \_\_\_\_\_, Westchester County, New York known and designated on the tax map of the Town of \_\_\_\_\_ insert tax map information if possible or at least the street location, comprising approximately # acres, and more particularly described in Exhibit A attached hereto and incorporated herein by reference, hereinafter known as the "Property"; and; Attach the legal description of the property subject to the easement. If the easement is on only a part of a parcel of land which is not subdivided into encumbered and unencumbered portions, a legal description may need to be created by a survey.

**WHEREAS** the Grantee is a publicly supported tax exempt nonprofit organization, and a qualified organization under Sections 501(c)(3) and 170(h) of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, and is a New York not-for-profit corporation within the meaning of Article 49, Title 3, of the Environmental Conservation Law of the State of New York, organized for the purpose, among others, of conserving real property, and is thereby qualified to be the grantee of conservation easements; and

**WHEREAS** the Property consists of ...f or example wetlands, woodlands and other important natural habitat and serves as a buffer to a protected natural area, etc. This paragraph includes a list of the conservation values of the property, which should reflect the characteristics and values the Land Trust seeks to protect; and

**WHEREAS** specific conservation values of note may be set out in separate paragraphs, for example, "Whereas the property consists of 10 acres of wetland adjacent to the Reservoir River which flows directly into New York Reservoir, a surface drinking water source for 12 million people, and provides an important buffer between the adjacent residential land and the reservoir." or "Whereas the Property provides habitat for and is a known breeding area for spotted turtles, a species of concern in Westchester County."

**WHEREAS** the conservation values of the property are documented in a Baseline Data Report dated \_\_\_\_\_ which is on file in the office of the Westchester Land Trust, and is incorporated herein by reference, and which includes an inventory of the relevant conservation values, maps, photographs, reports and other documents that the parties agree provide an accurate representation of the Property at the time of the execution of this conservation easement, and which is intended to provide objective baseline information for purposes of future monitoring and enforcement; and

**WHEREAS** conservation of the Property, subject to the terms of this easement, will yield significant benefits to the public by ... Describe the public benefit, such as open space, a scenic vista, wetland in an important watershed; consider how the easement fits into the

statutory purposes for conservation easements and within the IRS regulations. if the intent is for the donor to take a charitable deduction; and

**WHEREAS** the Grantor desires to donate... Describe what the grantor is giving up such as development rights, public access to a trail to convey to Grantee the right to preserve and protect the conservation values described herein by encumbering the Property with a conservation easement pursuant to the provisions of New York Conservation Law, Article 49, Title 3; and

**WHEREAS** the Grantee agrees to accept this conservation easement and to honor the intentions of the Grantee as stated herein and to preserve and protect the Property in perpetuity according to the terms of this easement for the benefit of this and future generations.

**NOW THEREFORE**, in consideration of the foregoing and the mutual covenants terms, conditions, and restrictions contained herein, the Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property of the nature and character and to the extent set forth herein.

**1. Purpose.** It is the purpose of this easement to... Describe the particular conservation values of the property that the easement is intended to protect. This should be consistent with other provisions of the easement, in particular the restrictions imposed. Some examples include: to protect the scenic view of the Property from \_\_\_\_\_ Road; to ensure the open and natural character of the property; to protect the wetlands on the property from development; to provide an opportunity for passive recreation for the public; etc. This easement shall prevent any use of the property that will impair or interfere with the conservation values of the property by restricting use of the property as provided herein.

**2. Prohibited Uses and Restrictions.** Any activity on or use of the property inconsistent with the purpose of this conservation easement is prohibited. Without limiting the generality of the foregoing provision, the following restrictions specifically apply to the property;

**a.** No quarry, gravel pit, surface or subsurface mining or drilling, or other mining or drilling activities prohibited under applicable provisions of Section 170(h) of the Internal Revenue Code shall be permitted on or under the Property.

**b.** No dumping or storage of ashes, non-composted organic waste, sewage, garbage, or any toxic or offensive materials shall be allowed on the Property.

**c.** No more than *de minimus* commercial recreational activities may be conducted on the Property.

**d.** Notwithstanding any other restriction contained herein, the owner of the Property (or any relevant part thereof) or the Grantee may take such actions with respect to the Property as are necessary to protect the health and safety of the public and the persons using the Property; provided that if any such action is contrary to a restriction contained

herein, the action shall be limited to the minimum variation necessary to afford the required protection.

The above restrictions are fairly common in a conservation easement, and are included as examples of fairly standard provisions. Numbers a. b. and c. are specifically required by IRS regulations for easements that will result in charitable deductions from income taxes. For more in depth discussion, see the introduction to this model easement.

**3. Rights Conveyed to Grantee.** To accomplish the purposes of this easement, the following rights are conveyed to the Grantee by this easement.

The following provision can be added to this paragraph if the easement allows the Grantee to provide public access.

If Grantee elects to exercise any right to enter upon the property other than to monitor for compliance with the terms of this easement, or to authorize other persons to enter upon the property, it shall be obligated to obtain appropriate liability insurance against injury and damage to third parties and shall name the then owner of the Property as additional insureds under that policy.

The following three paragraphs are standard provisions which need to be included for any easement that is to be tax deductible.

- a. The right to preserve and protect the conservation values of the Property.
- b. The right to enter upon the Property at reasonable times in order to monitor compliance and otherwise enforce the terms of this easement. Grantee shall provide Grantor or Grantor's successors, reasonable notice of such entry unless Grantee determines that immediate entry is required to prevent, terminate or mitigate violation of this easement.
- c. The right to prevent any activity on, incursion into, or use of the property that is inconsistent with the purposes of this easement, and to require the restoration of such areas or features of the property that are damaged by any inconsistent activity or use pursuant to the remedies set forth in section 6 herein.

There may be other rights that are granted to the Grantee by the terms of the easement that will be listed here. Two possible provisions are given below as examples, but might be much more specifically drafted to describe the terms under which the Grantee could exercise these functions.

- d. The right, but not the obligation, to construct and maintain hiking trails on the Property, to cut, remove and plant trees and to maintain and/or improve the wetlands and other natural habitat on the Property.

e. The right to permit members of the public to have access to the Property, but solely for passive recreational purposes.

Unless the easement specifies that public access is to be allowed, the right of a property owner to exclude the public is not disturbed. However it may be advisable to make it a specific provision if only to make it clear to the Grantor that nothing is being given away unintentionally.

**4. Reserved Grantor's Rights.** Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights accruing from its ownership of the Property, including, without limitation, the right to sell or transfer the Property, as owner, subject to the restrictions and covenants set forth in this easement; and the right to engage in, or permit others to engage in, all uses of the property that are not expressly prohibited herein and are not inconsistent with In addition, any other provision of this easement to the contrary notwithstanding, Grantor specifically reserves for itself and its successors in interest with respect to the Property, and they shall enjoy, the following rights with respect to the Property:

This provision will usually be applicable to a conservation easement. It merely notes that the Grantor is not giving up anything except what the easement says .

Some reserved rights may be specifically listed to make it clear that the Grantor is not giving them up, and this section may be used to ensure that the Grantor and Grantee have the same understanding of the activities to be allowed on the Property. For instance, are hiking trails a compatible use in an easement to protect a fragile ecosystem? Is the construction of a tennis court or a swimming pool allowed in an easement that prohibits all further development? If the easement protects residential property from further development, some consideration should be given to the options to be available if the current buildings are destroyed, or if a new owner wishes to replace them. Several examples are given below.

a. Grantor reserves the right to construct a swimming pool and a tennis court on the property for the personal use of Grantor and his invitees. Any such facilities shall be sited, constructed and landscaped so as to be compatible with the surroundings.

b. Grantor specifically reserves the right to control access to the property except that specifically granted to Grantee for purposes of monitoring compliance with this easement, and no right of access to the general public to any portion of the Property is conveyed by this easement.

This provision, obviously, is only included when no public access is provided for in the easement.

**5. Extinguishment of Development Rights.** By this Conservation Easement, Grantor grants and donates to Grantee all remaining development rights that are now or hereafter may be allocated to, implied, reserved or inherent in the Property, and all parties agree that all such development rights are terminated and extinguished as a result of such grant and donation.

If development rights are to be extinguished, this provision should be included. If they are only partially extinguished, or limited, this section should so state. For instance, a provision could

donate all development rights except right to construct one additional residence on the property. The specific provisions of the reserved right to either add on to an existing building or build others would be part of the section on Grantor's reserved rights. In the alternative, it could be drafted as part of the section on prohibited uses. Such provisions may specify the location by creating a building envelope, may limit the square footage of any additional buildings or additions to existing buildings, or may provide for architectural review in appropriate situations.

## **6. Enforcement.**

**a. Notice.** If Grantee determines that a violation of this easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand that corrective action sufficient to cure the violation be taken. Where the violation involves injury to the property resulting from any use inconsistent with the terms or the purpose of this conservation easement, Grantee shall demand that Grantor restore the Property to its prior condition in accordance with a plan approved by the Grantee.

**b. Injunctive Relief.** If Grantor fails to cure the violation within 30 days after receipt of notice of a violation from Grantee, or, where the violation cannot reasonably be cured within a 30 day period, Grantor fails to begin curing such violation within a 30 day period, or Grantor fails to diligently continue to cure such violation until it is cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this easement, to enjoin the violation by temporary or permanent injunction, and to require the restoration of the property to the condition that existed prior to any such injury.

**c. Damages.** Grantee shall be entitled to recover damages for a violation of the terms of this easement or for injury to any of the conservation values protected by this easement, including, without limitation, damages for loss of scenic, aesthetic, or environmental values. Without limiting Grantor's liability therefore, Grantee may, in its sole discretion, apply any damages recovered to the costs of undertaking any corrective action on the Property.

The easement should, at a minimum, provide for the right to sue for restoration, and to sue for the cost of restoration if the Grantee expends funds on restoring the property as a result of Grantor's violation of the terms of the easement.

**d. Emergency Enforcement.** If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, Grantee may pursue its remedies under Section 6 without prior notice to Grantors or without waiting for the period for cure to expire.

**e. Costs of Enforcement.** All reasonable costs of enforcing the terms of this easement against Grantor, including but not limited to the costs and expenses of legal action, reasonable attorney's fees, and any costs involved in the restoration of the Property resulting from Grantor's violation of the terms of this easement, shall be borne by

Grantor unless Grantor ultimately prevails in judicial enforcement, in which case each party shall bear its own costs.

**f. Forbearance.** Forbearance or delay by Grantee in the exercise of any of its rights to enforce this easement or to exercise any right granted to it under this easement shall not be deemed a waiver of such rights or of any of the terms of the easement. Grantors hereby waive any defense of laches, estoppel or prescription.

**g. Acts Beyond Grantor's Control.** Grantee shall have no cause of action under this easement against Grantor for injury or damage to the property which is beyond Grantor's control, including, without limitation, flood, fire, wind, storms, or earth movement, or from any prudent action taken by Grantor, under emergency conditions, to prevent, abate, or mitigate significant injury to the Property or adjacent properties from such causes.

Grantor and Grantee may want to consider a provision requiring mediation of any disputes prior to litigation in addition to the above enforcement procedures. Such a provision could be inserted in this document at this point.

**7. Notices and Approvals.** Grantor agrees to give Grantee written notice before exercising any reserved right, the exercise of which may have an adverse impact on the conservation interests of this conservation easement. Grantor further agrees to notify Grantee of any conveyance, lease or transfer of the Property, such notice to be given in writing at least twenty (20) days in advance of such conveyance, lease or transfer. The failure to give such notice shall not, however, invalidate the conveyance, lease or transfer. When Grantee's or Grantor's approval is required for any action or activity allowed by this easement to be taken only with approval, such approval shall be in writing and signed by both parties to this easement agreement or their successors. Any notice required by this easement shall be deemed given when received or three days after being mailed by certified or registered mail, return receipt requested, postage prepaid, properly addressed as follows: (a) if to Grantee, at address set forth above; (b) if to Grantor, at the address set forth above; (c) if to any subsequent owner, at the address provided by notice to Grantee of transfer of the property as required by this paragraph. Any party may change the address to which notices are to be sent to him, her or it by duly giving notice pursuant to this paragraph.

**8. Costs and Liabilities.** Grantors shall retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate liability insurance coverage. Grantor shall remain solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this easement, and all such construction and other such activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantor shall keep the Property free of all liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor. Some easements provide for the Grantee to have a very active role in managing the property, such as allowing the Grantee to provide for public access and develop trails and other recreation facilities on the Property. In that case, a provision would be drafted partitioning the responsibilities described above in an appropriate fashion.

**9. Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority, including any taxes imposed upon, or incurred as a result of, this easement, and shall furnish Grantee with evidence of such payment upon request.

**10. Representations and Warranties.** Grantor represents and warrants that, after reasonable investigation and to the best of its knowledge:

**a.** No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, or polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment exists or has been released, generated, treated, stored, used, disposed or, deposited, abandoned, or transported in, on, from, or across the Property;

**b.** There are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements;

**c.** Grantors and the Property are in compliance with all federal, state, and local laws, regulations and requirements applicable to the Property and its use;

**d.** There is no threatened or pending litigation in any way affecting, involving, or related to the Property;

**e.** No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that the Grantors might reasonable expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders; and

**f.** If at any time there occurs, or has occurred, a release in, on, or about the Property of any substance now, or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or to the environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by the Grantee, in which case the Grantee shall be responsible therefore.

Grantee should seriously consider requesting a "Phase I" environmental audit as part of the baseline data report. The importance placed on this depends on the characteristics of the property which is to be subject to the easement.

**11. Amendment.** This conservation easement may be amended upon the written consent of Grantee and Grantor; provided that no amendment may alter the restrictions on use or permitted structures, nor shall it allow subdivision that is inconsistent with the purposes of this conservation easement, nor shall it in any way limit the perpetual duration of this easement. Any such amendment, variance or waiver shall be consistent with the basic purposes of this conservation easement and shall comply with Article 49, Title 3, of the Environmental Conservation Law, and Section 170(h) of the Internal Revenue Code. Any such amendment, variance or waiver that does not comply with Article 49 or Section 170(h) shall be void and of no force or effect. Any amendment shall be in writing and shall be recorded in the official records of the County of Westchester, State of New York.

**12. Recordation.** Grantee shall record this instrument in a timely fashion in the official records of Westchester County, New York State, and may re-record it at any time as may be required to preserve its rights in this easement.

**13. Assignment.** Grantee's rights and obligations under this conservation easement may be assigned only to an organization that is a qualified organization under Section 170(h) of the Internal Revenue Code (or any successor provision then applicable) and is a not-for-profit conservation corporation or other entity authorized to take title to a conservation easement under New York Environmental Conservation Law, Article 49, Title 3, and which agrees to continue to carry out the conservation purposes of this conservation easement. Any assignee other than a governmental unit must be an entity able to enforce this conservation easement, having purposes similar to those of Grantee and which encompass those of this conservation easement. Grantee agrees to provide Grantor notice of any assignment pursuant to paragraph 7 herein, 20 days prior to any assignment. Failure to provide such notice prior to assignment shall not affect the validity of the assignment, nor shall it impair the validity of this easement or limit its enforceability in any way.

The Grantor may want to specify assignment to a specific third party in the event that the Grantee ceases to exist or is unable to continue to carry out its responsibilities under this easement. In that case, the easement should be signed by the 3rd party, and that organization should be provided with a copy of the baseline data file, and the land trust may want to consider providing regular status report.

**14. Subsequent transfers.** Any subsequent conveyance of any interest in the Property, including, without limitation, transfer, lease or mortgage, shall be subject to this conservation easement, and any deed, lease, mortgage or other instrument evidencing or effecting such conveyance shall contain language substantially as follows: "This [conveyance, lease, mortgage, easement, etc.] is subject to a Conservation Easement which runs with the land and which was granted to the Westchester Land Trust, Inc., by instrument dated \_\_\_\_\_, 1996, and recorded in the office of the Clerk of Westchester County at Liber \_\_\_ of Deeds at Page \_\_\_." The failure to include such language in any deed or instrument shall not affect the validity or enforceability of this conservation easement. \_

The baseline data on the property should include a title report which will include information about any encumbrances on the Property as of the time the easement is executed. If there is an existing mortgage, it must be subordinated to the easement if the easement is to be deductible.

**15. Binding Effect.** The provisions of this conservation easement shall run with the Property in perpetuity and shall bind and be enforceable against the Grantor and all future owners and any party entitled to possession or use of the Property or any portion thereof while such party is the owner or entitled to possession or use thereof. As used in this conservation easement, the term "owner" includes the owner of any beneficial equitable interest in the Property or any portion thereof; the term "Grantor" includes the original Grantor, his, her or their heirs, successors and assigns, all future owners of all or any portion of the Property, and any party entitled to possession or use thereof; and the term "Grantee" includes the original Grantee and its successors and assigns. Notwithstanding the foregoing, upon any transfer of title, the transferor shall cease being a Grantor or owner for purposes of this conservation easement and shall have no further responsibility or liability hereunder for acts done or conditions arising thereafter, but the transferor shall remain liable for earlier acts and conditions. The obligations imposed on Grantor by this agreement shall be joint and several.

**16. Extinguishment.** If circumstances arise in the future that make the purpose of this easement impossible to accomplish, and if this Easement or any of its restrictions are extinguished by judicial proceeding, then, upon any subsequent sale, exchange or involuntary conversion by the Grantor, the Grantee shall be entitled to that portion of the proceeds equal to the proportionate value of the conservation restrictions as provided immediately below. For such purposes only, Grantor agrees that the donation/conveyance of this Conservation Easement to Grantee gives rise to a property right, immediately vested in Grantee, with a fair market value that is equal to the proportionate value that the conservation restrictions hereby created at the date hereof bears to the value of the Property as a whole at the date hereof (subject to reasonable adjustment to the extent permissible under Section 170(h) of the Internal Revenue Code for any improvements which may hereafter be made on the Property). Grantee agrees to use its share of such proceeds in a manner consistent with the conservation purposes of this conservation easement.

**17. Condemnation.** If all or any part of the property is taken by the exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking or in lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantors or Grantees in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Grantee's share of the balance of the amount recovered shall be determined by multiplying that balance by the ratio set forth in paragraph 16.

**18. Further Acts.** Each party shall perform any further acts and execute and deliver any documents, including amendments to this conservation easement, which may be reasonably necessary to carry out its provisions or which are necessary to qualify this instrument as a conservation easement under Article 49, Title 3, of the Conservation Law or any regulations promulgated pursuant thereto.

**19. Severability.** Invalidation of any provision of this conservation easement by court judgment, order, statute or otherwise shall not affect any other provisions, which shall be and remain in force and effect.

**20. Interpretation.** This instrument is intended to create a "qualified real property interest" for "conservation purposes," as defined in Section 170(h) of the Internal Revenue Code, and shall be interpreted consistently with such intention. In the event any provision has been omitted from this instrument which is necessary to qualify the interest hereby granted as such a "qualified real property interest" for "conservation purposes", such provision shall be deemed incorporated herein to the extent necessary to cause the interest hereby granted to be so qualified.

**IN WITNESS WHEREOF**, the parties have executed this instrument as of the day and year written above.

**GRANTOR:** \_\_\_\_\_

*If signed by an individual for a partnership or corporation, the persons name and title. Make sure the person signing has the authority to encumber the property.*

**GRANTEE:** The Westchester Land Trust, by \_\_\_\_\_

*Signatures need to be acknowledged and notarized.*

## **DRAFT**

A Local Law to amend  
Chapter 250, Zoning, of  
the Code of the Village of  
Rye Brook

**BE IT ENACTED** by the Board of Trustees of the Village of Rye Brook as follows:

1. The following text shall be added to Chapter 250 of the Zoning Code to read as follows:

\* \_\_\_\_ Purpose.

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

\* \_\_\_ Objectives.

Where development occurs in sensitive scenic areas, the Village wishes to assure that such development is consistent with the objective of maintaining the existing scenic character of such areas to the greatest extent practicable.

Specifically, the Village finds:

1. That the character of scenic roads is a critical feature of the Village of Rye Brook whose preservation enriches and benefits the quality of life experienced by its residents;
2. That it is desirable to protect and preserve scenic views as well as sensitive natural features on the Scenic Roads including, but not limited to, stone walls, geological formations, historical architectural artifacts and significant vegetation;
3. That new development and redevelopment in the Village should be designed so as to not diminish the scenic landscapes and natural areas along these corridors and should be reviewed by the Architectural Review Board, Planning Board and Tree Preservation Committee;

4. That preservation of these features, while providing for appropriate development, can only be achieved by encouraging flexibility in the design of land use and development projects;
5. That landscape planning should be an integral component of all subdivision and site plan reviews.

\* \_\_\_ Authority

Pursuant to Article Two, Section 10 of the New York State Municipal Home Rule Law and the Village of Rye Brook Vision Plan, the Village of Rye Brook hereby enacts a Scenic Roads Overlay District.

\* \_\_\_ Zoning District Map

The location and boundaries of the Scenic Roads Overlay District are set forth on the Zoning District Map, Village of Rye Brook. Said map, together with all explanatory matter thereon and all amendments thereto, is hereby adopted and declared to be a pertinent part of this Chapter. Said map shall be kept up to date and shall be on file in the Village Clerk's office for the use and benefit of the public.

\* \_\_\_\_ Overlay Plan Review

1. No new permitted use within any residential, business, or commercial district may be constructed within the Scenic Roads Overlay District without approval of the Village Board of Trustees. However, all accessory uses, building or structure shall be first referred to the Building Inspector. Upon review of the Building Inspector, he may grant approval of the structure, grant conditional approval of the structure, or forward the application to the Village Board of Trustees for review and referral to the Planning Board. The Building Inspector may only grant approval or conditional approval for applications that are deemed to not have an impact upon stone walls or other natural features and cannot be viewed from any public roadway and/or other public area; for all other applications, the Building Inspector shall refer the application to the Board of Trustees for review.

a. In order to grant overlay plan review approval for a proposed structure, the approving authority must find that such structure or alteration is architecturally compatible with surrounding structures and that the important scenic and natural features of the site will be preserved.

b. To the maximum extent practicable, all structures to be built on a tract of land that includes land within the Scenic Roads Overlay District shall be sited and clustered on the land in such a way as to avoid occupying or obstructing views of land in this District. One method by which the Village can achieve these objectives is through the establishment of a conservation easement on a portion of the subject property to be developed.

2. Properties within any residential, business, commercial or industrial district with existing structures and buildings shall not be precluded from applying conservation easements to undeveloped portions of such properties provided that the property for which the easement is sought contributes to the preservation of the Village's historic or scenic resources or natural features.

\* \_\_\_ Criteria for Designation.

The additional regulations set forth below supplement, but do not replace, the use and bulk regulations otherwise applicable to the underlying zoning districts except that in all residential districts the front yard Height/Setback Ratio shall not apply for the underlying zoning district.

- a. The structure or alteration shall be architecturally compatible with surrounding structures and the important scenic and natural features of the site shall be preserved.
- b. The minimum front yard setback requirement for all structures, as set forth for the underlying zoning district shall be increased by a factor of 1.5.
- c. A conservation easement shall be placed on an area 35' wide, measured from the front property line and running the length of the lot frontage that shall remain as a vegetative buffer.
- d. The 35' front yard buffer shall be managed by the property owner in a way that preserves significant existing vegetation, plant specimens, landforms and water features; nurtures tree planting and other natural landscaping efforts; creates dense landscaped buffers; preserves stone walls; and/or ensures both the protection of visual buffers.

Where existing trees and vegetation are proposed to be removed, sufficient landscaping and tree planting will be undertaken to mitigate visual impacts and the loss of existing vegetation.

- i. Use of native species shall be encouraged.
  - ii. Landscape and plantings shall be used to screen structures visible from the road. Trees should be planted in random clusters, not in rows, to complement the appearance of natural tree stands. The relative heights of trees at planting should be proportional to their relative heights at maturity.
  - iii. No cutting of trees exceeding 12 or more inches DBH, will be permitted in accordance with Chapter 235 of the Village Code.
- 
- e. Existing natural and constructed features, including but not limited to, rock outcrops, stone walls, gates, and entrance piers will be preserved and incorporated into development plans. If new stone walls are to be erected, they will match, as closely as possible, existing masonry, stone type and wall heights.
  - f. Any new utility equipment installed within the designated road shall be properly screened so as to insure the character and continuity of

the road is not compromised in accordance with proposed Local Law # \_\_\_\_-2004, Section 215-5.

- g. Parking areas shall not be located within the 35' buffers and shall be placed so as to minimize encroachment upon areas and terrain which have qualities of natural beauty.
  
- h. Any grading or earth moving operation is to be conducted so that the final, post-development, contours appear to be consistent with the pre-development terrain, both on and adjacent to building sites. Within the 35' landscape buffer, existing grade shall not be altered.