



## **VILLAGE OF DOBBS FERRY BOARD OF TRUSTEES AGENDA**

**MEETING DATE:** SEPTEMBER 28, 2021

**AGENDA ITEM SECTION:** PUBLIC HEARINGS

**AGENDA ITEM NO. :** 2

**AGENDA ITEM:** CONSIDER A WRITTEN REQUEST FOR WAIVER FROM THE DOBBS FERRY ZONING CODE §300-40(A)(1) MANDATORY SET-ASIDE OF AFFORDABLE HOUSING UNIT ON THE SAME PROPERTY AS THE PROPOSED DEVELOPMENT OF 19 LIVINGSTON AVENUE (TIHSI IS NOT A HEARING ON SITE PLAN)

**ITEM BACKUP DOCUMENTATION:**

1. PUBLIC HEARING LEGAL NOTICE
2. LETTER DATED AUGUST 2, 2021 FROM LINDA B. WHITEHEAD/ATTORNEY TO MAYOR ROSSILLO AND THE BOARD OF TRUSTEES
3. MEMORANDUM DATED AUGUST 5, 2021 FROM VALARIE MONASTRA, AICP TO MAYOR ROSSILLO AND THE BOARD OF TRUSTEES
4. LETTER DATED SEPTEMBER 27, 2021 FROM LINDA B. WHITEHEAD/ATTORNEY TO MAYOR ROSSILLO AND THE BOARD OF TRUSTEES



**VILLAGE OF DOBBS FERRY**

112 Main Street  
Dobbs Ferry, New York 10522  
TEL: (914) 231-8500 • FAX: (914) 693-3470

**LEGAL NOTICE**

**NOTICE IS HEREBY GIVEN** that a public hearing will be conducted by the Village Board of Trustees on September 28, 2021 at 6:30 p.m., or as soon thereafter as the matter may be heard, to consider one a written request for waiver from the Dobbs Ferry Zoning Code §300-40(A)(1) mandatory set-aside of affordable housing unit on the same property as the proposed development of 19 Livingston Avenue. The receipt of said request has triggered cessation of further consideration of the proposed project until the discrete issue can be determined.

The hearing will be conducted using a hybrid method combining in-person and virtual attendance in keeping with the Village's goal of protecting public health and in compliance Chapt. 147 of the Laws of 2021 permitting virtual participation by Board Members. For virtual attendance, interested parties may be heard using Zoom, a web-based videoconferencing service:

Webinar ID 861 5028 5812, Passcode: 289013. Copy/paste the following link:

<https://us02web.zoom.us/j/86150285812?pwd=ZkNIUDRRSzdUOTWtyUjR09> or by Telephone: 1 929 205 6099 during the hearing.

A copy of the written request will be included on the Village Website [www.dobbsferry.com](http://www.dobbsferry.com) along with the meeting agenda. Village Board of Trustees will also accept written comments forwarded in advance to [LDreaper@dobbsferry.com](mailto:LDreaper@dobbsferry.com).

**BY ORDER OF THE BOARD OF TRUSTEES**

Dated: September 13, 2021

Elizabeth Dreaper  
Village Clerk

MCGULLOUGH, GOLDBERGER & STAUDT, LLP

ATTORNEYS AT LAW

1311 MAMARONECK AVENUE, SUITE 3-40

WHITE PLAINS, NEW YORK

10605

(914) 919-6100

FAX (914) 919-2510

WWW.MCGULLOUGHGOLDBERGER.COM

FRANK S. MCGULLOUGH, JR.  
JAMES STAUDT  
LINDA S. WHITEHEAD  
SETH M. MANDELBAUM  
PATRICIA W. GURAHIAN  
KEVIN E. STAUDT  
STEVEN M. WRABEL

AMANDA L. BROSY  
MEREDITH A. LEFF

CHARLES A. GOLDBERGER  
EDMUND C. GRAINGER, III  
COUNSEL

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



August 2, 2021

Mayor Vincent Rossillo and  
Members of the Village Board of Trustees  
Village of Dobbs Ferry  
112 Main Street  
Dobbs Ferry, NY 10522

Re: Site Plan Application, The Townhouses at 19 Livingston Avenue

Dear Mayor Rossillo and Members of the Village Board:

As you will recall, this firm represents Livingston Development Group, LLC (the "Applicant"), and Victor Serricchio, Brian Dyer and Andrew Sokolik, the owners of the approximately 1.219 acre property known as 19 Livingston Avenue (the "Property"), formerly the location of Rudy's Beau Rivage. Our clients are proposing the development of eight (8) townhouses on the Property, each of which will be located on its own lot (the "Project"). We are writing to follow up on the discussion at your June 22<sup>nd</sup> meeting regarding the requirement for an affordable unit. As we indicated at that time, we would like to request a waiver of this requirement pursuant to Section 300-40C(4) of the Dobbs Ferry Zoning Ordinance and ask that at your August 10, 2021 meeting you schedule the required public hearing to issue such a waiver. In exchange for the waiver, as provided for in the Code, our client proposes to purchase or build a unit at an alternate location within the Village and lease or sell such unit as an affordable unit. We have reviewed a number of options and determined it is not practical to place a unit within the Project as discussed below, and we believe this alternative will actually present a benefit to the Village and better suit the goals of the affordable housing program.

We have reviewed the economics and financial viability of providing an affordable unit available to someone making 80% of the area median income (AMI) pursuant to the requirements of the Code within the Project. We have also spoken to experts in the affordable housing field regarding how purchasers are qualified for units and what issues have arisen in qualifying purchasers in this area, including Rose Noonan of the Housing Action Council, the

entity which has been tasked with qualifying purchasers for many affordable housing units throughout the County. We hope to have a letter from Rose Noonan reviewing these issues to support our analysis. Based upon this analysis and research, we do not believe it makes sense to include an affordable unit in the Project for many reasons.

The eight units as currently proposed for the Project are all essentially identical layouts of approximately 3,400 square feet with three (3) bedrooms. If one of these were to be an affordable unit, the requirements of the Code would require that the affordable unit be a three (3) bedroom unit with a minimum of 2,720 square feet (80% of the average size of the market units). This requirement exists so that the affordable unit does not appear very different than the market rate units in the project and will blend in.

Affordability is determined by calculating the full monthly housing costs, including mortgage payments (which would also likely include approximately \$125/month for private mortgage insurance as the buyer is unlikely to have a 20% down payment), property taxes, homeowners insurance and HOA fees. These monthly costs cannot exceed 30% of the gross income of the qualifying household, and the gross income cannot exceed 80% of the AMI. For example, for 2021, 80% AMI for a 3-person household is \$91,800 and the monthly expense cannot exceed \$2,295. I have been advised that for the purpose of setting pricing of affordable units, 1 person per bedroom is generally used to determine household size. Therefore, for a three bedroom townhouse affordability would be based upon 80% AMI for a 3 person household. Even utilizing the figures for a 4-person household, this would not significantly affect the calculation (monthly housing cost of \$2,550 for a 4-person household). We have been advised that in Westchester County very few households of greater than 3 persons have applied for affordable units, with the typical household for a "family" type unit often being made up of a single parent with two children.

Based upon the monthly expenditure for a 3- or 4-family household, and estimating the combined expenses to be within what is affordable at 80% AMI, the maximum purchase price for the proposed unit would be approximately \$175,000 or potentially up to \$200,000 if the taxes are reduced and the HOA fee kept to a minimum. This pricing would represent a sales price of only approximately \$70 per square foot. Even if the unit were able to be made as small as 2000 square feet, the sales price would still be less than \$100 per square foot.

There is no question that even at \$100/square foot, the cost of construction will significantly exceed the purchase price for the affordable unit. In addition to typical building costs, given the soil conditions and steep slopes on the Property and existing utility conditions, this Project will have higher than usual costs. In addition, as you are likely aware, costs of materials have increased significantly since the start of the pandemic, further adding to construction costs. The client has estimated construction costs ranging from \$331 to \$386 per square foot for pure building costs (labor and materials only) and when soft costs and financing costs are added in this increases to \$357 to \$417 per square foot (not including marketing, broker

Mayor and Members of the Board  
August 2, 2021  
Page 3

commissions, transfer taxes and other closing costs). Using the most conservative numbers set forth above of sale price of \$200,000, or \$100 per square foot for a 2000 square foot unit, the construction cost will equal \$714,000 (\$357 per square foot x 2000 square feet), resulting in a loss of \$514,000. Typically a builder can make up some of the loss from an affordable unit through the sale of market units. However, there will be only seven market rate units here and just to break even would add at least \$75,000 to the purchase price of each of the market rate units. Again, these are conservative numbers not reflecting all costs which will actually be incurred. The loss is too great for the project to be economically feasible.

Another significant concern with including an affordable unit in this Project will be the difficulty of finding an eligible purchaser. There has actually been much discussion amongst lenders and developers of affordable housing around the problems qualifying buyers to purchase for sale affordable units. Qualification of buyers for these units has been an ongoing problem, which has gotten worse as costs have gone up. A qualified buyer must have funds available for a down payment, have sufficient income to qualify for the mortgage, but not have income exceeding 80% AML. This combination greatly limits the number of qualified buyers for this unit. Adding an affordable unit for which a very limited group of purchaser's will qualify, if any, does not seem to further the goals of the Village to ensure the availability of fair housing for residents of various income levels.

As an alternative, and as provided for in your Code, our client proposes to purchase or build a housing unit at an alternate location within the Village and lease or sell the unit subject to the applicable affordability restrictions. We would be happy to work with the Affordable Housing Task Force and local real estate agents to identify an appropriate property and prepare same for sale or rental. This option has been used elsewhere and has even been used by Westchester County. We believe this alternative better meets the goals of the Affordable Housing Program as it will result in the addition of an affordable unit which will be available to a wider range of qualifying parties. Therefore, this represents a viable alternative anticipated under your Code to support the Villages goal of providing affordable housing.

Thank you for your consideration and we look forward to continuing to work with you on this Project.

Very truly yours,



Linda B. Whitehead

cc: Livingston Development Group, LLC  
Christina Griffin AIA  
Paul Petretti, P.E., L.S.



## MEMORANDUM

**TO:** Mayor Rossillo and Members of the Village Board of Trustees

**FROM:** Valerie Monastra, AICP

**Re:** 19 Livingston Avenue

**DATE:** August 5, 2021

**CC:** Richard Leins Esq., Village Administrator  
Lori Lee Dickson Esq., Village Attorney  
Ed Manley, Building Official and Land Use Officer

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Livingston Development Group LLC., (the "Applicant" and "Owner") is seeking Site Plan and Subdivision approvals to construct eight (8) townhomes. The property is located at 19 Livingston Avenue, Section Block and Lot 3.12-104-1 ("Project Site"). The property is located in the MDR-1, Mixed Density Residential-1, zoning district.

This application is before the Village Board for a waiver to the affordable housing set aside per Section 300-40(C)(4). A resolution calling for a public hearing for the waiver is also before the Board.

### General and Procedural Comments

1. **SEQR.** The SEQR process has not yet commenced. The Applicant has provided a Full Environmental Assessment Form (EAF), and this application is categorized as an Unlisted Action under SEQR. The Village Board will be the Lead Agency for this application due to its site plan approval authority. The Village Board and Planning Board are both involved agencies. Therefore, it is recommended that the Village Board undertake a coordinated SEQR review for the entire action, which also includes subdivision approval. It is recommended that the Village Board circulate a Notice of Intent to be Lead Agency.
2. **County Board Referrals.** This project will require a referral to the Westchester County Planning Board per Section 239 L, M and N of the New York State General Municipal Law and Section 277.61 of the County Administrative Code as it is greater than 5,000 square feet and within 500 feet of Route 9.
3. **Affordable Housing.** This application requires the set-aside of one (1) affordable housing unit per Section 300-40 of the Zoning chapter. The Applicant is requesting a waiver to the affordable housing set aside per Section 300-40.C(4). In order to grant a waiver to the set-aside, the Village Board will need to undertake the following process:

- a. The Village Board must vote during a public meeting whether to take further action on the request. In the event that the Board of Trustees affirmatively votes to consider the request, a final determination may be made only following a public hearing duly published noticed between four (4) and 20 days prior to the date of the hearing.
- b. At the hearing, the Applicant needs to provide information to the Village Board to justify the waiver in light of the goals of the affordable housing program and provide evidence that the inclusion of any or all the affordable housing units required would render the development financially infeasible.
- c. After conducting a public hearing, the Board of Trustees is to deliberate by balancing the request for waiver against the goals of the affordable housing program and may vote to grant or deny, in whole or in part, the request for the waiver. In the event the request is granted in whole or part, the Board of Trustees must require an applicant to undertake the following actions:
  - i. To purchase, construct or affirmatively facilitate the construction of the affordable housing unit(s) at alternate location(s) within the Village; or
  - ii. To deposit into the affordable housing fund a per-unit fee in lieu, in an amount to be determined by the Board of Trustees based upon the unique facts and circumstances of the proposed development; or
  - iii. To undertake a combination of both construction of a unit(s) at another location or payment of per-unit fee in lieu, but in no event should the combination fail to represent the totality of the applicant's obligation for required affordable housing units in the proposed development.

The Applicant submitted a letter dated August 2, 2021, proposing to purchase another dwelling unit within the Village and selling or renting it as an affordable unit. It is recommended that the Village Board considers calling for a public hearing on the Applicant's request.

4. **Site Plan Approval.** Per Section 300-52 of the Zoning chapter, this application requires Site Plan approval by the Village Board of Trustees because it is located on a property that is over one acre, and it requires a recommendation by the Planning Board. A public hearing conducted by the Village Board is required for Site Plan approval.
5. **Subdivision Approval.** This application will require a Subdivision approval from the Planning Board per Section 300-70 of the Zoning chapter. A public hearing conducted by the Planning Board is required for Subdivision approval.
6. **Architectural and Historic Review Board.** This application will require Architectural and Historic Review Board approval.
7. **Local Waterfront Revitalization Consistency.** The Village Board will need to make a consistency determination with the Village's LWRP per Section 300-52.D as part of the final Site Plan approval.

**Affordable Housing Waiver Documentation Comments**

1. The Applicant provided some information as to the financial infeasibility of including an affordable housing dwelling unit within the proposed project. However, the Applicant should provide backup documentation of the estimated construction costs.
2. The Applicant proposes purchasing another dwelling unit within the Village and selling or renting it as an affordable unit. Will this unit also be a 3-bedroom unit? What is the proposed period of affordability?
3. It is recommended that any purchase of an off-site unit and filing of deed restrictions take place prior to any issuance of a certificate of occupancy of the proposed market-rate dwelling units.



MCGULLOUGH, GOLDBERGER & STAUDT, LLP  
ATTORNEYS AT LAW  
1311 MAMARONECK AVENUE, SUITE 340  
WHITE PLAINS, NEW YORK

FRANK S. McCULLOUGH, JR.  
JAMES STAUDT  
LINDA B. WHITEHEAD  
SETH M. MANDELBAUM  
PATRICIA W. GURAHIAN  
KEVIN E. STAUDT  
STEVEN M. WRABEL

AMANDA L. BROSY  
MEREDITH A. LEFF

CHARLES A. GOLDBERGER  
EDMUND C. GRAINGER, III  
MICHAEL A. ZAMAT  
COUNSEL

10605

(914) 949-6400

FAX (914) 949-2510

WWW.MCGULLOUGHGOLDBERGER.COM

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



September 27, 2021

Mayor Vincent Rossillo and Members of the Village Board of Trustees  
Village of Dobbs Ferry  
112 Main Street  
Dobbs Ferry, NY 10522

Re: Site Plan Application, The Townhouses at 19 Livingston Avenue  
Affordable Housing waiver request

Dear Mayor Rossillo and Members of the Village Board:

As you will recall, this firm represents the owners of the approximately 1.219 acre property known as 19 Livingston Avenue (the "Property"), formerly the location of Rudy's Beau Rivage. Our clients are proposing the development of eight (8) townhouses on the Property, each of which will be located on its own lot as required by zoning (the "Project"). I am writing in advance of the public hearing scheduled for September 28, 2021 on our request for a waiver of the requirement for an on-site affordable unit pursuant to Section 300-40C(4) of the Dobbs Ferry Zoning Ordinance. In exchange for the waiver, as provided for in the Code, our client proposes to purchase or build a unit at an alternate location within the Village and lease or sell such unit as an affordable unit. This letter is intended to supplement our previous letter of August 2, 2021, which we ask also be considered as part of the record on the public hearing. A copy of that letter is being provided herewith.

Section 300-40C(4) provides for alternatives to set-aside. The section offers three alternatives as follows:

- (a) Require the applicant to purchase, construct or affirmatively facilitate the construction of the affordable housing unit(s) at alternate location(s) within the Village; or
- (b) Require the applicant to deposit into the affordable housing fund a per-unit fee in lieu, in an amount to be determined by the Board of Trustees based upon the unique facts and circumstances of the proposed development; or

(c) Require a combination of both Subsection C(4)(a) and (b) above, but in no event shall such combination fail to represent the totality of the applicant's obligation for required affordable housing units in the proposed development.

In accordance with subparagraph (a) above, our client is proposing to purchase a three (3) bedroom residence either already in good condition or which they will improve to be in good condition, and place a deed restriction for fifty (50) years as either a for sale or rental unit meeting the Village's definition of an Affordable Housing Unit.

Our client has also offered to pay a fee in lieu as provided for in subparagraph (b). This option could allow for the Village to identify and purchase a site to construct a new affordable housing unit. The Affordable Housing Committee in the Village of Hastings-on-Hudson has successfully developed a number of affordable housing units in the Village.

The applicant is required to justify the waiver in light of the goals of the affordable housing program and provide evidence that the inclusion of the affordable housing unit required would render the development financially infeasible. The Board of Trustees in making its determination on an alternative is required to "deliberate publicly by balancing the request for waiver against the goals of the affordable housing program...."

The introductory paragraph of Section 300-40 Affordable Housing reads as follows:

The purpose of this section is to help ensure the continued availability of fair housing for residents of various income levels, which in turn will help maintain Dobbs Ferry's community character, and which further promotes the general welfare by increasing the potential for qualifying individuals or families who also may be workers and volunteers providing valuable services to the Village to be able to live in Dobbs Ferry. It is the objective of this section to address these purposes by requiring certain types and scales of development in the Village of Dobbs Ferry, taking place either through the construction of new structures or through the rehabilitation of existing structures, to contribute to the creation of affordable housing that affirmatively promotes fair housing consistent with the standards and conditions of this section.

Based upon the information provided below and in our August 2, 2021 letter, we believe the provision of the appropriate off-site three (3) bedroom affordable housing unit will satisfy this stated purpose and goal, and better serve the needs of the community. This is an opportunity

to have an existing structure rehabilitated if necessary and then restricted to provide the continued availability of fair housing for residents of various income levels, while promoting the general welfare by increasing the potential for qualifying individuals or families who also may be workers and volunteers providing valuable services to the Village to be able to live in Dobbs Ferry. As is set forth in our August 2, 2021 letter, we believe there will be very few families who would qualify to purchase an affordable unit in the proposed project.<sup>1</sup> We would anticipate this off-site unit would have lower or no association charges and lower taxes, making it affordable to more families if it were to be for sale. As a rental, which our client is willing to provide, it would be available to an even broader range of residents at 60% AMI. **However the affordable unit is provided, it will serve the goal of creating affordable housing and therefore satisfy the goals of the affordable housing program.**

The Code also requires the applicant provide evidence that the inclusion of the affordable housing unit require would render the development financially infeasible. We provided some analysis in our prior letter. The estimated construction cost which we have presented range from \$331 to \$386 per square foot for pure building costs (labor and materials only) and when soft costs are added in this increases to \$357 to \$417 per square foot (not including marketing, broker commissions, transfer taxes and other closing costs). These estimates are based upon actual construction costs of other similar projects throughout Westchester and Fairfield Counties as well as site specific considerations. The project will have significant site development costs of \$800,000 to \$900,000 for work on the steep slopes, significant retaining walls, the storm water system and connection to the County trunk sewer. In an effort to limit the extent of steep slope disturbance and retaining walls, our client reduced the size and scope of the project from the prior application and therefore we are proposing only eight (8) units. The site costs alone will be over \$100,000 per unit. I have confirmed the range of overall construction costs with a number of architects, and they are even on the low end. Since the onset of the pandemic, both lumber and steel costs have skyrocketed, likely increasing these costs even more. Soft costs also will include the significant cost incurred in the approval process and the engineering and architectural fees as well as significant permitting fees. These calculations also do not take into account taxes and interest for the carrying time on the property.

Assuming slightly different finishes in the affordable unit, the cost will still be over \$300 square feet for the affordable unit at 2700 square feet for a total construction cost of over \$800,000. This unit will be restricted on sale price to less than \$300,000, resulting in a loss of between \$500,000 and \$600,000. This adds approximately \$85,000 per unit to the already

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<sup>1</sup> Enclosed please find a summary of the qualification process prepared by the Housing Action Council to supplement the summary in our prior letter.

significant construction costs of the seven (7) remaining market rate units, significantly cutting into the owners already low profit margin for the project and impacting the financial viability of the project overall.

Another significant issue is that the zoning in this instance increases the cost of providing affordable units and also impacts the feasibility as it requires fee simple townhouses or individual 1, 2 or 3 family homes. These types of units are more expensive to build than apartments or stacked flats. It also provides less flexibility on layout. As the proposed units are multi-level attached townhouses in groupings of two or three units, which are being built into the existing slope to reduce site impacts, it is difficult to vary the size of the units without the smaller unit(s) looking odd and out of place. It is simply not easy in this type of configuration to significantly vary unit sizes. This is much easier to do in a multi-family development with apartments, as has been done at Print House Lofts and as is proposed at Cedar Commons. If stacked flats were permitted here it would be more feasible to do an on-site affordable unit. It should be noted that the affordable units at Print House Lofts were much smaller (600 and 677 square feet) and were priced at \$183,000 and \$220,000. Again, these smaller units were able to be created due to the apartment design as opposed to townhouses.

We heard several Trustees express concern about this being another project with million dollar plus luxury homes. The issue at hand however does not relate to the project as a whole, but how the required affordable unit will be provided. Again, the zoning here (as well as the sloped site and other site constraints) limits what can be built and encourages lower density and thereby larger, higher cost units.

The Village's recently amended Affordable Housing Law allows for a waiver and off-site alternative. We would be happy to work with the Affordable Housing Task Force and the Village on how best to accomplish the provision of an off-site affordable unit.

Thank you for your consideration and we look forward to continuing to work with you on this Project.

Very truly yours,



Linda B. Whitehead

cc: Livingston Development Group, LLC  
Christina Griffin AIA  
Paul Petretti, P.E., L.S.



## Housing Action Council Inc.

55 South Broadway, 2<sup>nd</sup> Fl ■ Tarrytown ■ NY 10591  
(914) 332-4144 ■ Fax (914) 332-4147 ■ [rnoonan@affordablehomes.org](mailto:rnoonan@affordablehomes.org)

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### Methodology for Calculating Initial Sale Prices of Affordable Homes

In determining the initial sale price of an Affordable Home, the following assumptions generally are made:

- 5% down payment
- 30 year fixed rate mortgage at 1 point above the rate at the time of calculating the initial sale price
- Priced to be affordable to a household at 70% of Westchester County Area Median Income (AMI) based on household size. Household size based on number of bedrooms
- 33% of gross household income available for housing costs, i.e., principal, interest, real estate taxes, private mortgage insurance (PMI), homeowner's insurance and common charges and walls-in insurance and amenity charges as applicable
- Recurring monthly debt (car loans, student loans, credit card debt, child support payments, etc) that does not exceed 8% of gross household income

#### Example

3 person household at 70% of AMI	--	\$80,325
33% of Monthly Household Income	--	\$ 2,210
Less Real Estate Taxes (estimated)	--	(500)
Less Common Charges (estimated)	--	(350)
Less PMI (estimated)	--	(100)
Less Walls-In Insurance	--	( 50)
Available for Principal & Interest	--	\$1,210
Mortgage Amount (4%)	--	\$253,500
Sale Price	--	\$ 266,790
Downpayment	--	\$ 13,290
Mortgage Amount	--	\$253,500

#### Affordability of Example to Households (3 to 7 person eligible households)

3 Person Maximum Household Income	--	\$91,800
4 Person Maximum Household Income	--	\$102,000
5 Person Maximum Household Income	--	\$110,150

6 Person Maximum Household Income -- \$118,300

7 Person Maximum Household Income -- \$126,480

### Marketability

In addition to meeting the minimum household size requirement and having a household income that does not exceed 80% of AMI for the specific household size, the household must be mortgageable. This generally means that they must have satisfactory credit (minimum credit score of 640, no charge offs, no judgements or bankruptcies), sufficient savings for the down payment and closing costs (in the example above, \$13,290 for the down payment plus \$12,000 to \$15,000 for closing costs), minimum recurring debt and an income higher enough to cover the mortgage payment.

Experience has shown that many interested households do not meet these mortgageability criteria and that on the average there are 20 applicants for every 1 applicant who is qualified. Experience also demonstrates that most households who apply for 3 bedroom units are 3 to 4 person households as compared to larger size households.

*The Housing Action Council is a non-profit organization with extensive experience in marketing and qualifying households for affordable homeownership developments. Housing Action Council is also the Marketing Consultant for Westchester County's Affordable Housing Program and is the administrator of affordable housing programs for several municipalities including the Village of Briarcliff Manor, Town of Cortlandt and City of New Rochelle.*