

DEPARTMENT OF PLANNING

Dr. Robert L. Yeager Health Center
50 Sanatorium Road, Building T
Pomona, New York 10970
Phone: (845) 364-3434 Fax: (845) 364-3435

Douglas J. Schuetz
Acting Commissioner

Arlene Miller
Deputy Commissioner

March 3, 2016

New Square Zoning Board of Appeals
37 Reagan Road
New Square, NY 10977

Tax Data: 42.19-3-64

Re: GENERAL MUNICIPAL LAW REVIEW: Section 239 L and M

Map Date: 1/4/2016

Date Review Received: 1/29/2016

Item: *YOSSI BERGER - SCHIFF (NS-13A)*

Use variance to allow the construction, maintenance, and use of a three-story, mixed-use building on .1928 acres in the LDR zoning district. The first floor is proposed to be used for commercial storage space; a single-family residence will be located on the second and third floors. A side yard variance is also required.

East side of Slavita Road, approximately 155 feet north of Mezritch Road

Reason for Referral:

Town of Ramapo, Village of New Hempstead, NYS Route 45

The County of Rockland Department of Planning has reviewed the above item. Acting under the terms of the above GML powers and those vested by the County of Rockland Charter, I, the Commissioner of Planning, hereby:

****Disapprove***

The LDR zone is classified as a low density residential district in the Village of New Square. The uses permitted by right include one-, two-, three- and four-family residences, group homes, private schools, parks, playgrounds and places of worship. Townhouses, group dwellings and multi-family dwellings are allowed by special permit. Commercial uses are not permitted in this zoning district. However, they are permitted in the GB and NS zones.

This department is not generally in favor of granting use variances because of the land use precedent that can be set. An applicant must prove that applicable zoning regulations and restrictions have caused unnecessary hardship in order for a use variance to be granted. To prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located:

A. The applicant cannot realize a reasonable return, provided the lack of return is substantial as

YOSSI BERGER - SCHIFF (NS-13A)

shown by competent financial evidence.

B. The alleged hardship is unique and does not apply to a substantial portion of the district or neighborhood.

C. The requested variance will not alter the essential character of the neighborhood.

D. The alleged hardship is not self-created.

The applicant has not demonstrated that an unnecessary hardship exists. No financial evidence has been submitted. The use variance shall not be granted.

The following comments address our additional concerns about this proposal.

1 Applications to the Zoning Board of Appeals for variances from the requisite bulk standards must include a site plan with a complete bulk table. The August 25, 2015 site plan does not depict a full bulk table. The standards for minimum lot area, lot width, maximum height and required parking are missing. It is not possible to evaluate this proposal without a bulk table containing all of the applicable standards.

2 The Town of Ramapo and the Village of New Hempstead are two of the reasons this proposal was referred to this department for review. The Ramapo municipal boundary is 395 feet east of the site; the New Hempstead municipal boundary is 465 feet west of the site. New York State General Municipal Law states that the purposes of Sections 239-l, 239-m and 239-n shall be to bring pertinent inter-community and countywide planning, zoning, site plan and subdivision considerations to the attention of neighboring municipalities and agencies having jurisdiction. Such review may include inter-community and county-wide considerations in respect to the compatibility of various land uses with one another; traffic generating characteristics of various land uses in relation to the effect of such traffic on other land uses and to the adequacy of existing and proposed thoroughfare facilities; and the protection of community character as regards predominant land uses, population density, and the relation between residential and nonresidential areas. In addition, Section 239-nn was enacted to encourage the coordination of land use development and regulation among adjacent municipalities, and as a result development occurs in a manner that is supportive of the goals and objectives of the general area.

The Town of Ramapo and the Village of New Hempstead must be given the opportunity to review the proposal and its impact on community character, traffic, water quantity and quality, drainage, stormwater runoff and sanitary sewer service. The areas of countywide concern noted above that directly impact the Town of Ramapo and the Village of New Hempstead must be considered and satisfactorily addressed, as well as any additional concerns about the proposal.

3 A review shall be completed by the New York State Department of Transportation and any required permits obtained.

4 A review must be completed by the County of Rockland Sewer District #1 and all required permits obtained.

5 The applicant must comply with the conditions of the Rockland County Health Department's November 16, 2015 letter.

6 The proposed residential buildings must comply with all requirements of the New York State Uniform Fire Prevention and Building Code.

7 A review must be completed by the County of Rockland Office of Fire and Emergency Services, the Village Fire Inspector and the Moleston Fire District to ensure that there is sufficient maneuverability on-site for emergency vehicles.

YOSSI BERGER - SCHIFF (NS-13A)

8 Permitting development that does not comply with the applicable use or bulk standards can set an undesirable land use precedent and result in the overutilization of individual sites. The ability of the existing infrastructure to accommodate mixed-use development is a countywide concern and must be evaluated. This evaluation must consider whether local roads will become more congested and the sewer system, stormwater management systems and the public water supply will be overburdened. The Village must consider the cumulative and regional impacts of permitting such development.

9 A side yard variance is sought for this proposal. Given that the proposed location of the residential structure on the southern half of the property, we believe the need for this variance is self-created. A more central location on the site would eliminate the need for a side yard variance.



Douglas J. Schuetz
Acting Commissioner of Planning

cc: Mayor Israel Spitzer, New Square
New York State Department of Transportation
Rockland County Department of Health
Rockland County Drainage Agency
Rockland County Sewer District #1
Rockland County Office of Fire and Emergency Services
Moleston Fire District
New York State Department of State,
Division of Code Enforcement & Administration
Village of New Hempstead
Town of Ramapo
Anthony R. Celentano P.L.S.

Rockland County Planning Board Members

**NYS General Municipal Law Section 239 requires a vote of a 'majority plus one' of your agency to act contrary to the above findings.*

The review undertaken by the Rockland County Planning Department is pursuant to, and follows the mandates of Article 12-B of the New York General Municipal Law. Under Article 12-B the County of Rockland does not render opinions, nor does it make determinations, whether the item reviewed implicates the Religious Land Use and Institutionalized Persons Act. The Rockland County Planning Department defers to the municipality forwarding the item reviewed to render such opinions and make such determinations if appropriate under the circumstances.

In this respect, municipalities are advised that under the Religious Land Use and Institutionalized Persons Act, the preemptive force of any provision of the Act may be avoided (1) by changing a policy or practice that may result in a substantial burden on religious exercise, (2) by retaining a policy or practice and exempting the substantially burdened religious exercise, (3) by providing exemptions from a policy or practice for applications that substantially burden religious exercise, or (4) by any other means that eliminates the substantial burden.

Proponents of projects are advised to apply for variances, special permits or exceptions, hardship approval or other relief.

Pursuant to New York State General Municipal Law §239-m(6), the referring body shall file a report of final action it has taken with the Rockland County Department of Planning within thirty (30) days after final action. A referring body which acts contrary to a recommendation of modification or disapproval of a proposed action shall set forth the reasons for the contrary action in such report.

