

**DEPARTMENT OF PLANNING**

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**Douglas J. Schuetz**  
*Acting Commissioner*

**Arlene R. Miller**  
*Deputy Commissioner*

July 27, 2017

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

**Tax Data:** 42.19-3-81

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

**Map Date:** 5/21/2017

**Date Review Received:** 6/16/2017

**Item:** 20 APTA BOULEVARD (NS-17A)

Variances for lot area, lot width, front yard and back yard to permit a two-lot subdivision of .2616 acres in the LDR zoning district and the construction, maintenance and use of a three-story, semi-attached residential building containing four units on each lot.

South side of Apta Boulevard, approximately 245 feet east of Route 45

**Reason for Referral:**

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***

1 It is not possible to evaluate all of the variances required for this proposal, as the subdivision map is deficient in several ways. The 11x17 map submitted as part of this application is difficult to read. It specifies an incorrect zoning designation and contains a bulk table that is missing several crucial standards including minimum lot area and maximum floor area ratio. A revised drawing must be submitted that indicates the LDR zoning designation. It must include a bulk table with all the requisite bulk standards and clearly specify the variances required for this proposal. The existing conditions must be depicted on a separate drawing.

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2 While the proposed lot area of the two lots is not provided in the bulk table, it appears that each lot will be approximately 5,697 SF. A lot area variance of 32 percent is therefore required for each parcel. This department is not in favor of creating undersized, non-conforming lots. The parcel shall not be subdivided. A development proposal that conforms to the LDR bulk standards shall be submitted.

3 Permitting development that does not comply with the applicable bulk standards can set an undesirable land use precedent and result in the overutilization of individual sites. As noted above, the new lots will be undersized and non-conforming, requiring a minimum lot area variance of 32 percent and a lot width variance of 31 percent. While the bulk table does not contain the applicable LDR bulk standards, we believe additional variances are required. The ability of the existing infrastructure to accommodate increased residential density on undersized, non-conforming parcels 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. The proposal must be scaled back to more closely conform to the LDR bulk standards.

4 The application form indicates that a four-family, semi-attached, three-story residence is proposed on each parcel. The subdivision map shows a four-family dwelling on Lot 1 and a five-family dwelling on Lot 2. All application materials must be consistent. The public hearing notice will have to be reissued if it contained incorrect information.

5 Multi-family dwellings containing four units are permitted by right in the LDR zoning district; special permits are required for multi-family dwellings in excess of four families. As noted above, it is unclear how many units are proposed on Lot 2. The need for a special permit must be clarified.

6 While the applicable bulk standards are not provided on the subdivision map, it is clear that this proposal will result in an overutilization of the site. On Lot 1, parking space 3 is shown under a proposed porch. The garbage enclosure will be inaccessible to sanitation workers if a vehicle is parked in space #1. The exterior stairs and rear deck are within ten feet of the property line. Stacked parking is proposed on Lot 2. The refuse enclosure will be inaccessible to sanitation workers if a vehicle is parked in space #s 1 or 3. The residential structure and the rear deck are within ten feet of the property line. The building footprint of the semi-attached residential structures must be reduced and fewer units permitted.

The following recommendations address our additional concerns about the application for variances.

7 Special permit uses are, by definition, subject to a higher standard of review. The proposed multi-family residences must conform to the special permit standards outlined in Section 3.3.1 through 3.3.4 of the Zoning Law, as well as the applicable LDR bulk standards.

8 A review must be completed by the New York State Department of Transportation, and any required permits obtained.

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9 The Village of New Hempstead is one of the reasons this proposal was referred to this department for review. The municipal boundary is along Route 45, approximately 245 feet west 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 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 Village of New Hempstead must be considered and satisfactorily addressed, as well as any additional concerns about the proposal.

10 The applicant must comply with the conditions of the Rockland County Health Department's letter of June 20, 2017.

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

12 The proposed residential buildings must comply with all requirements of the New York State Uniform Fire Prevention and Building Code. As shown, the proposed residential building will require a variance from the New York State Uniform Fire Prevention and Building Code since the proposed structure is within ten feet of the property line. In addition, since no specific building height has been provided, it cannot be determined if the building is greater than 30 feet to the eaves. This information must be provided.

13 A review must be completed by the Rockland County Office of Fire and Emergency Services, the Village of New Square Fire Inspector, or the Moleston Fire Department to ensure that there is sufficient maneuverability on site for fire trucks, in the event an emergency arises.

14 All proposed entrances, stairways, window wells and other building features must be delineated on the map demonstrating that they will not impact yard requirements and parking maneuverability for the site.

15 The drawing shall contain additional map notes that list all appropriate information, including the district details.

16 A vicinity map must be provided. It shall include a north arrow and a scale.

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17 Pursuant to the Rockland County Sanitary Code, Article XIII, Section 13.8.1, all multiple dwellings with three or more rental units must register and obtain a Multiple Dwelling Rental Certificate (MDRC). If this proposed multi-family dwelling meets the requirements of the Multiple Dwelling Rental Registry requirement, then the owner must register and obtain the MDRC. Failure to comply is a violation of Article XIII, which may result in penalties of \$2,000 per day.

18 Pursuant to General Municipal Law (GML) Section 239-m and 239-n, if any of the conditions of this GML review are overridden by the board, then the local land use board must file a report with the County Commissioner of Planning of the final action taken. If the final action is contrary to the recommendation of the Commissioner, the local land use board must state the reasons for such action.

19 In addition, pursuant to Executive Order 01-2017 signed by County Executive Day on May 22, 2017, County departments are prohibited from issuing a County permit, license, or approval until the report is filed with the County Commissioner of Planning. The applicant must provide to any County agency which has jurisdiction of the project: 1) a copy of the Commissioner report approving the proposed action; or 2) a copy of the Commissioner of Planning recommendations to modify or disapprove the proposed action, and a certified copy of the land use board statement overriding the recommendations to modify or disapprove, and the stated reasons for the land use board's override.

  
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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
- New York State Department of State
- Rockland County Office of Fire and Emergency Services
- Moleston Fire District
  
- Anthony R. Celentano P.L.S.
- Village of New Hempstead

Nochum Goldmunzer  
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.*

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*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.*

