

**DEPARTMENT OF PLANNING**

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

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

May 11, 2018

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

**Tax Data:** 50.07-1-4.2

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

**Map Date:** 3/22/2018

**Date Review Received:** 4/16/2018

**Item:** 23 WASHINGTON AVENUE (NS-3B)

A variance application to allow a two-lot subdivision on 0.31 acres in the R-1 zoning district. Previous variances for use and bulk were granted to allow a 6-unit addition to an existing two-family dwelling. Variances are currently requested for lot area, lot width, and rear yard for lot 1; and lot area, front yard, rear yard, and floor area ratio for lot 2.

The northern side of Washington Avenue, approximately 470 feet east of North Main Street (NYS Route 45).

**Reason for Referral:**

North Main Street (NYS Route 45), Village of New Hempstead

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***

According to the application form provided, this property has already received substantial bulk and use variances to permit the construction of an oversized, multifamily dwelling. The project, as previously approved, represents a substantial overutilization of the site for a property in a zoning district that only allows one- and two-family dwellings. Although the current variance application will not directly result in additional units or construction, the proposed subdivision has several design and procedural defects that warrant its disapproval.

1 The requirements given in the bulk tables are not accurate. All allowed uses in the R-1 zoning district require a 30 foot front yard, a 15 foot side yard, a 35 foot combined side yard, and a 40 foot rear yard. The correct requirements must be provided in the table so that the Village Board can make an informed determination. In addition, the bulk requirements do not have separate "clear yard" categories. Article 3.3.9 states a paved terrace is exempt from yard requirements, but open or enclosed porches are not. As a result, the requested variances are not sufficient to allow the project as it is depicted on the site plan. This application must be disapproved and a revised application submitted with correct requirements and measurements.

## **23 WASHINGTON AVENUE (NS-3B)**

2 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. The minimum lot size for all allowed uses in the R-1 zoning district is 10,000 square feet. The two proposed lots only provide 64% and 73% of that minimum. In addition, the residential density of lot 2 will increase to 35.9 units per acre as a result of the proposed subdivision. The ability of the existing infrastructure to accommodate increased residential density on undersized 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.

3 All parking spaces are located on lot 1. The proposed subdivision results in lot 2 having no on-site parking spaces. Each lot must provide adequate parking for its residents. The parking area itself is deficient in several ways: a deck is encroaching on space 4; spaces 1, 2 and 3 are partially located on lot 2; no turnaround area is provided and the area where vehicles would navigate is occupied by stairs; and the entry stairs on lot 1 empty into the parking area, which is a safety hazard for pedestrians. The parking area must be reconfigured to address all of these defects. If any handicapped accessible spaces are required, they must be shown on the site plan. A parking easement must be provided for lot 2. Lastly, the site plan must indicate that the walkway on lot 1 is to be removed.

4 It has been indicated in the materials submitted with this application that the required variances for the proposed 6-unit addition have been granted. However, the Rockland County Department of Planning has not received the minutes of the meeting stating the Village of New Square Zoning Board of Appeals' actions or overrides. As required under Section 239-m 6. of the State General Municipal Law, within thirty days after final action, the referring body shall file a report of the final action it has taken with the county planning agency or regional planning council. 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. This report must be issued prior to the granting of the current variance application.

The following comments address our additional concerns about this proposal.

5 The application form indicates that these variances and subdivision have been requested for the purpose of dividing ownership of the property. There are legal methods of dividing ownership of real property other than a subdivision, such as the creation of a condominium or co-operative association. The use of the subdivision process in this situation is unnecessary and inappropriate. It requires substantial bulk variances and negates the general intent of land use regulations. Moreover, the granting of these variances and subdivision will set a precedent that may result in nearby property owners seeking the same relief. This would result in a proliferation of non-conforming lots and structures, along with a significant increase in residential density that would negatively impact the community character in this neighborhood. The village must consider the consequences of unnecessarily creating non-conforming lots and structures for the purpose of dividing ownership.

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

7 The applicant must comply with all comments made by the Rockland County Sewer District #1 in their letter of April 24, 2018.

8 The applicant must comply with all comments made by the Rockland County Health Department in their letter of April 19, 2018.

9 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.

**23 WASHINGTON AVENUE (NS-3B)**

10 The application form indicates the property receives water service from United Water. The form must be corrected to Suez.

11 The Village of New Hempstead is one of the reasons this proposal was referred to this department for review. The municipal boundary is approximately 415 feet to the west of the parcel. 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.

12 There are two notes on the site plan bulk tables that refer to variances granted on June 29, 1970, but no specific variances are indicated. In addition, the existing lot was only created by a subdivision in 2005. The meaning of these notes must be clarified.

13 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.

14 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.

*Arlene Miller*  
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Deputy for 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  
  
Anthony R. Celentano P.L.S.  
Village of New Hempstead

## **23 WASHINGTON AVENUE (NS-3B)**

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.*