

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 R. Miller
Deputy Commissioner

September 28, 2018

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

Tax Data: 50.07-2-46.2

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

Map Date: 8/17/2018

Date Review Received: 8/31/2018

Item: 30 JEFFERSON AVENUE (NS-30)

A variance application to allow a three-lot subdivision and the construction of four two-family dwellings on 0.29 acres in the R-1 zoning district. Variances are requested for lot area, side yard, side yard clear, rear yard, and rear yard clear for lots 1, 2, and 3; and front yard and front yard clear for lot 2.

The southern side of Jefferson Avenue, approximately 390 feet west of Osterh Boulevard.

Reason for Referral:

Town of Ramapo

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 The applicant proposes to construct 2 two-family dwellings on lot 3. The R-1 zoning district is a one- and two-family residential district. The proposed four units on lot 3 is a multifamily use, which is not an allowed use in the R-1 zoning district, either by right or by special permit. This project requires a use variance to permit a multifamily residence. 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 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. The use variance shall not be granted.

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If the Village Board determines that this is an appropriate use for this neighborhood, it should undertake a comprehensive study to examine whether the area should be rezoned to allow it. Rezoning is a more appropriate zoning tool to achieve the desired land uses, as bulk regulations for the zoning district provide standards that can be used to determine compliance.

2 Article V, Section 3 of the New Square zoning regulations empowers the Board of Appeals to "vary or adapt the strict application for any of the requirements of this law in the case of unusual physical conditions... whereby such strict application would result in practical difficulty or unnecessary hardship that would deprive the owner of the reasonable use of the land or building involved, but in no other case." This property has no unusual conditions. The owner is not subject to any difficulties or unnecessary hardships and can make reasonable use of the land in its current state.

3 The bulk requirements given in the application and on the site plan bulk table do not match the Village requirements for any of the uses allowed in the R-1 zoning district. As previously stated, multifamily residences are not allowed in the R-1 zoning district and, therefore, there are no bulk requirements for this use. However, the Table of Bulk Regulations requires that all allowed uses in the R-1 zoning district, including two-family residences, have a lot area of 10,000 square feet, a minimum width of 70 feet, a 30-foot front yard, a 15-foot side yard, a 35-foot combined side yard, a 40-foot rear yard, and a maximum of two stories. The bulk requirements for the R-1 zoning district 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. There is no floor area ratio requirement in the R-1 zoning district. As a result, the proposed structure requires additional and substantially larger variances than what was requested in the application. This application must be disapproved as it substantially misrepresents to the Board and to the public the variances required by this proposal. Any revised application must include the correct bulk requirements in the application, the bulk table and the public hearing notice. Any new or revised applications must be forwarded to the County Planning Department for review as required by General Municipal Law.

4 The application form indicates that this subdivision has 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 this 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 application must be denied and the village must consider the consequences of unnecessarily creating non-conforming lots and structures for the purpose of dividing ownership.

5 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 lot areas for the three proposed lots are 37%, 26%, and 63% of the required minimum in the R-1 zoning district. The lot widths are all deficient by 50%. Since the proposal is essentially one multifamily structure divided by property lines, each lot has side yard of zero feet and combined side yard of 8 feet. Lot 2 has a front yard of zero feet. Lot 1 has a rear yard of zero feet and lots 2 and 3 have rear yards of five feet, which is deficient by 88%. The third stories are not allowed. The ability of the existing infrastructure to accommodate increased residential density on undersized and 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 application must be disapproved and the property developed in a manner that is consistent with the zoning regulations of the Village.

The following comments address our additional concerns about this proposal.

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6 The Town of Ramapo is the reason this proposal was referred to this department for review. The municipal boundary is approximately 470 feet southwest 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 Town of Ramapo 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 must be considered and satisfactorily addressed, as well as any additional concerns about the proposal.

7 The applicant must comply with all comments made by the Rockland County Sewer District No. 1 in their letter of September 12, 2018.

8 A review must be completed by the Rockland County Department of Health to ensure compliance with Article XIX (Mosquito Control) of the Rockland County Sanitary Code.

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.

10 The site plan includes several trees, some of which are located within the building footprint. The site plan must indicate which trees are existing and will remain, which are existing and will be removed, and which trees are proposed.

11 The existing conditions of the property must be presented on a separate drawing from the proposed site plan.

12 All the proposed parking spaces are located on lots 1 and 3, with no parking located on lot 2. All required parking must be provided on site for each lot.

13 Access to the garbage enclosures is blocked by parking spaces. The garbage enclosure must be relocated so that they are accessible, do not interfere with parking, and do not encroach upon required yards.

14 The parking spaces requires vehicles to back out into the street, creating a potential hazard. The parking areas must be reconfigured to provide a turnaround area.

15 The proposed parking spaces are not sufficient for the eight proposed total residential units. Inadequate on-site parking will result in additional on-street parking and impede the safe and efficient flow of traffic. Since it is not an allowed use in the R-1 zoning district, there is no parking requirement for multifamily residences in this district. However, multifamily residences are allowed in the nearby R-2 zoning district. The parking requirement for multifamily residences in the R-2 zoning district is 1.5 spaces per dwelling unit. Applying this reasonable standard would result in a require of 12 parking spaces total. The Village must apply the R-2 zoning district standard and require an additional four parking spaces.

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16 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/Hillcrest Fire Department to ensure that there is sufficient maneuverability on site for fire trucks, in the event an emergency arises.

17 The proposed residential building 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 decks are located closer than ten feet to the property line.

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.



Douglas J. Schuetz
Acting Commissioner of Planning

cc: Mayor Israel Spitzer, New Square
Rockland County Department of Health
Rockland County Drainage Agency
Rockland County Sewer District #1
Rockland County Office of Fire and Emergency Services
Moleston/Hillcrest Fire District

Anthony R. Celentano P.L.S.
Town of Ramapo Planning Board

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.