Rockland County

Ed Day, Rockland County Executive

DEPARTMENT OF PLANNING
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Douglas J. Schuetz
Acting Commissioner

Arlene R. Miller
Deputy Commissioner

September 6, 2018

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

Tax Data: 42.19-3-74

Re: GENERAL MUNICIPAL LAW REVIEW: Section 239 L and M
Map Date: 7/27/2018 **Date Review Received:** 8/6/2018

Item: ***31 SLAVITA ROAD (NS-12H)***

A variance application to allow a two-lot subdivision of 0.436 acres in the LDR zoning district. Variances are requested for lot area and lot width. A 10-unit multifamily dwelling is proposed for lot 1, and a two-family dwelling is proposed for lot 2.

The western side of Slavita Road, approximately 120 feet north of Apta Boulevard.

Reason for Referral:

North Main Street (NYS Route 45), Town of Ramapo, 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**

1 The County is generally opposed to the creation of undersized lots. The existing lot is large enough to be subdivided into two conforming parcels. The requested variances are not necessary to develop this property. The County has concerns about not just the overdevelopment of this specific property, but for the precedent set by this development. Should neighboring property owners seek a similar relief, it will negatively impact the community character, and result in a higher residential density than what is prescribed by the zoning regulations.

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. As proposed, lot 2 is undersized by 38% and the width is deficient by 21%. 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. The variances must be denied and the property must be developed within the limitations of the zoning regulations.

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3 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. The property is a conforming lot that can be fully developed within the limits of current zoning regulations, which includes the creation of two conforming lots. The variances must be disapproved.

The following comments address our additional concerns about this proposal.

4 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 boundary is approximately 250 feet north and 440 feet east of the parcel. The New Hempstead boundary is approximately 320 feet 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 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 two neighboring municipalities must be considered and satisfactorily addressed, as well as any additional concerns about the proposal.

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

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

7 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.

8 The site plan title block and vicinity map indicate the property is located on Slavita Avenue, not Slavita Road. The bulk table indicates the minimum lot width in the LDR zoning district is 75 feet, not 70 feet. In addition, the bulk table indicates that one parking space is provided for each unit on lot 1, but only five spaces are shown for the ten-unit building. The site plan must be corrected.

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9 The site plan indicates the multifamily structure on lot 1 will have three stories and a FAR of 97%. However, the site plan shows a building footprint of approximately 6,250 square feet. Assuming each story will have a gross floor area equal to the footprint, the proposed structure will have an overall gross floor area of approximately 18,750 square feet. This would result in a FAR of 136%. Although this is an estimate, this FAR is 36% greater than the generous allowed maximum FAR of 100%. The magnitude of this discrepancy requires further attention. The applicant must positively demonstrate that the proposed structure will conform to the Village's FAR requirement; a FAR calculation must be provided on the site plan. If the FAR exceeds the allowable 100%, the variance application must be amended and the public hearing notice must be reissued. Any application that is revised due to an increase in FAR must be sent to this department for review.

10 The proposed parking spaces will require vehicles to back out into the roadway. This is an unacceptable hazard to vehicles and pedestrians. The parking spaces must be reconfigured to provide a turnaround area.

11 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.

12 The proposed residential buildings must comply with all requirements of the New York State Uniform Fire Prevention and Building Code. All sidewalks, stairs, decks, and window wells must be shown on the site plan to ensure that there is sufficient access to the building for firefighting purposes.

13 The specific height of the proposed building must be provided in the bulk table so that it can be determined if an aerial apparatus road is required.

14 The refuse enclosure is located within a required yard and can only be accessed through a parking space reserved for residents. The refuse enclosure must be relocated to allow access and not encroach upon required yards.

15 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.

16 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
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.

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Town of Ramapo Planning Board
Village of New Hempstead 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.