Rockland County

Ed Day, Rockland County Executive

DEPARTMENT OF PLANNING
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Douglas J. Schuetz
Acting Commissioner

Arlene R. Miller
Deputy Commissioner

February 22, 2018

New Square Village Board
37 Reagan Road
New Square, NY 10977

Tax Data: 50.07-3-17

Re: GENERAL MUNICIPAL LAW REVIEW: Section 239 L and M
Map Date: 5/2/2008 **Date Review Received:** 1/18/2018

Item: ***32 TRUMAN AVENUE (NS-24A)***

A special permit application to construct a three-story, nine-unit addition to an existing three-story, three-family residence on a 0.29 acre parcel in the R-1 zoning district. Variances are requested for back yard, back yard clear, and side yard clear.

The southern side of Truman Avenue, approximately 165 feet west of Garfield Road.

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

The applicant proposes to construct a 12-unit, multifamily residence in the R-1 zoning district. The R-1 zoning district is a one- and two-family residential district. A multifamily residence is not an allowed use, nor is it allowable by special permit. This project would require a use variance to permit a multifamily residence on this site. 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.

In addition, 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.

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. Since a use variance is deemed to be required for this project, the special permit application must be disapproved,

The following comments address our additional concerns about this proposal.

1 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. The Table of Bulk Regulations requires that all allowed uses in the R-1 zoning district have a 30' front yard, 15' side yard, 35' combined side yard, 40' 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. The bulk table must be corrected.

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 proposed front yard is 83% of the R-1 zoning district minimum. The side yard and combined side yards are 50% and 46% of the required minimums, respectively. The rear yard is deficient by 87%. The third story is not allowed. 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 The Town of Ramapo is the reason this proposal was referred to this department for review. The municipal boundary is approximately 380 feet to the east of the site and is zoned R-40, low density single-family dwellings. 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.

4 The applicant must comply with all comments made by the Rockland County Sewer District #1 in their letter of February 8, 2018.

5 The applicant must comply with all comments made by the Rockland County Department of Health in their letter of January 22, 2018.

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6 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 of the property line.

7 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.

8 The site plan shall contain map notes, including district information, and a vicinity map with a north arrow and scale.

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

10 There shall be no net increase in the peak rate of discharge from the site at all design points.

11 Prior to the start of construction or grading, a soil and erosion control plan shall be developed and in place for the entire site that meets the latest edition of the New York State Guidelines for Urban Erosion and Sediment Control.

12 Water is a scarce resource in Rockland County; thus proper planning and phasing of this project are critical to supplying the current and future residents of the Villages, Towns, and County with an adequate supply of water. A letter from the public water supplier, stamped and signed by a NYS licensed professional engineer, shall be issued to the municipality, certifying that there will be a sufficient water supply during peak demand periods and in a drought situation.

13 If any public water supply improvements are required, engineering plans and specifications for these improvements shall be reviewed by the Rockland County Department of Health prior to construction. In order to complete an application for approval of plans for public water supply improvements, the water supplier must supply an engineer's report pursuant to the "Recommended Standards for Water Works, 2003 Edition," that certifies their ability to serve the proposed project while meeting the criteria contained within the Recommended Standards for Water Works. These standards are adopted in their entirety in 10 NYCRR, Subpart 5-1, the New York State regulations governing public water systems. Further, both the application and supporting engineer's report must be signed and stamped by a NYS licensed professional engineer and shall be accompanied by a completed NYS Department of Health Form 348, which must be signed by the public water supplier.

14 The parking area shown on the site plan is not adequate. No curb cuts or access to the roadway are shown. The spaces are shown as 18' long while village regulations require each space to be 22' long. It will be difficult to maneuver in and out of spaces one and four. No turnaround area is provided. The proximity of the entry stairs and the parking lot creates a potentially hazardous situation for pedestrians. The parking area must be reconfigured to comply with village regulations, allow easier access for drivers, provide a turnaround area, and minimize conflicts between vehicles and pedestrians.

15 The proposed six parking spaces are not sufficient for a 12-unit multifamily residence. Inadequate on-site parking will result in additional on-street parking and impede the safe and efficient flow of traffic. 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 requirement of 18 parking spaces. The Village must apply the R-2 zoning district standard and require an additional 12 parking spaces.

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16 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.

17 The location of the trash dumpster/refuse container must be illustrated on the site plan. Access to the dumpster must be unimpeded, and it must be demonstrated that its location will not impact yard requirements and parking maneuverability for the site.

18 The site plan indicates the proposed structure will have three stories and a FAR of 1.00. However, the site plan shows a building footprint of approximately 5,164 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 15,492 square feet. This would result in a FAR of 1.22. Although this is an estimate, a FAR of 1.22 is significantly greater than the proposed FAR of 1.00. The magnitude of this discrepancy requires further attention. The applicant must confirm the FAR of the proposed structure and the bulk table must be corrected.

19 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.

20 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 Sewer District #1

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

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.