Rockland County

Ed Day, Rockland County Executive

DEPARTMENT OF PLANNING
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Douglas J. Schuetz
Acting Commissioner

Arlene R. Miller
Deputy Commissioner

November 27, 2018

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

Tax Data: 50.07-1-83

Re: GENERAL MUNICIPAL LAW REVIEW: Section 239 L and M
Map Date: 10/19/2018 **Date Review Received:** 10/24/2018

Item: ***3 CLEVELAND AVENUE (NS-20A)***

A variance application to allow a two-lot subdivision and construction of a four-unit multifamily, semi-attached residential building on 0.25 acres in the R-2 zoning district. An existing two-family dwelling is to remain on lot 2 and be attached by a common wall to the proposed structure on lot 1. Variances are requested for lot area, front yard, front yard clear, side yard clear, rear yard, rear yard clear, and floor area ratio for lot 1; and lot area, side yard clear, rear yard, and rear yard clear for lot 2.

The northern side of Cleveland Avenue, approximately 190 feet west of Jackson Avenue.

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**

1 The County objects to the practice of creating undersized lots, presumably 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 additional, 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. We have already seen other applications for similar subdivisions and overdevelopment of the sites, resulting in the need for substantial variances. 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.

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2 The bulk requirements given in the application and on the site plan do not match the Village requirements for any of the uses in the R-2 zoning district. Two-family and multifamily residences in the R-2 zoning district require minimum lot areas of 8,000 square feet, lot widths of 60 feet, and front yards of 20 feet. A two-family residence requires a side yard of 15 feet, a combined side yard of 35 feet, and a rear yard of 30 feet. A three-story multifamily residence requires a side yard of 20 feet and a rear yard of 40 feet. There are no separate "clear yard" requirements in the R-2 zoning district. 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-2 zoning district. Lastly, a two-family residence requires four parking spaces and a four-unit multifamily residence requires six parking spaces. Six parking spaces are provided on lot 2 and no spaces are provided on lot 1.

As a result of these discrepancies, the proposal requires additional and, in some instances, 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, 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.

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. The proposed lot areas for lot 1 and two are 47% and 89% of the required minimum, respectively. The side and rear yards for lot 1 are deficient by 60% and 87%, respectively. A wood deck on the eastern side of lot 2 is approximately three feet from the property line, but is not indicated on the bulk table. As a result, the side and total side yards are deficient by 80% and 69%. Lot 1 has a front yard of zero feet, lot 2 has a rear yard of zero feet, and zero parking spaces are provided on lot 1. 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 variance and subsequent subdivision must be disapproved and the property developed in a manner that is consistent with the zoning regulations.

The following comments address our additional concerns about this proposal.

4 The Village of New Hempstead is one of the reasons this proposal was referred to this department for review. The municipal boundary is approximately 410 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 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.

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

6 A review must be completed by the County of Rockland Department of Health and all required permits obtained from them.

7 The applicant must comply with all comments made by the Rockland County Sewer District No. 1 in their letter of October 31, 2018.

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

9 The multifamily structure on lot 1 requires six parking spaces. All required parking must be provided on lot 1. In order to provide sufficient parking, the number of units must be reduced and the building size scaled back.

10 The access easement across lot 2 is blocked by parking space 1 and a concrete structure. The easement must be free of encroachments and impediments.

11 The parking spaces on lot 2 will require all vehicles to back into the street and across a walkway. This is an unacceptable hazard to motorists and pedestrians. The parking area must be reconfigured to provide a turnaround area and minimize the potential conflict between vehicles and pedestrians.

12 The staircase at the eastern side of lot 1 is physically isolated from the street and parking area, with no sidewalk connection. A safe pedestrian accessway must be provided.

13 As shown, the proposed residential building may 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. 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.

14 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.

15 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.

16 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.

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17 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
Rockland County Office of Fire and Emergency Services
Moleston/Hillcrest Fire District

Anthony R. Celentano P.L.S.
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.