Rockland County

Ed Day, Rockland County Executive

DEPARTMENT OF PLANNING
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Douglas J. Schuetz
Acting Commissioner

Arlene R. Miller
Deputy Commissioner

March 9, 2018

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

Tax Data: 50.07-2-15.630

Re: GENERAL MUNICIPAL LAW REVIEW: Section 239 L and M
Map Date: 2/5/2018 **Date Review Received:** 2/8/2018

Item: ***40 OSTILLA AVENUE (NS-6U)***

A variance application to construct a five-family dwelling on 0.09 acres in the C-2 zoning district. Variances are requested for back yard and side yard clear.
The eastern side of Ostilla Avenue, approximately 390 feet south of Roosevelt Avenue.

Reason for Referral:

Town of Clarkstown

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 This application has multiple inconsistencies and irregularities, which warrant its disapproval. To begin, this department has questions as to the history of this property. County records indicate that, as recently as 2016, the subject property and the adjacent property to the south were formerly one parcel. This parcel was approximately 8,000 square feet, which is the minimum lot area in the C-2 zoning district. It appears that this property was subdivided to create the current parcel, which is the subject of this application. Variances for lot size and width would have been required to permit this subdivision. The bulk table indicates that these variances were granted; however, this department has no record of a subdivision or variance application being forwarded for review, as is required under General Municipal Law.

Second, the bulk requirements given on the site plan bulk table do not match the Village requirements for this use in the C-2 zoning district. The Table of Bulk Regulations indicates that bulk requirements for Multi-family residences in the R-2 zoning district are the applicable requirements for this project. For a three-story, five-family residence, the required front and side yards are 20 feet, rear yard is 40 feet, lot width is 60 feet, and 8 parking spaces are required. Not only is the bulk table incorrect, but the variances requested are not sufficient to allow this project, as depicted on the site plan. This project requires a variance for the number of parking spaces. In addition, the proposed side yard along the southern property line is zero feet. Moreover, side yard distances must be measured to the cantilevered living space on the second and third floors, based on the village definition of a

yard. The bulk requirements for the C-2 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. Applying the correct standards requires additional and substantially larger bulk variances than what has been requested.

Lastly, there are several inconsistencies in this application. The project is described as a five-family dwelling. However, architectural plans provided with the application only show a three-family dwelling. The site plan and page 9 of 12 of the application review form indicate a 2-foot cantilever for floors two and three. This cantilever is not shown on the architectural plans. Page 10 of 12 of the application review form only requests a variance for side yard clear. The bulk table indicates a variance for the back yard is also requested. The tax map designation on the site plan incorrectly gives the lot number as 15.610, not 15.630.

All materials must be consistent and applications must be processed in accordance to General Municipal Law. The variances granted for lot size and lot width must be forwarded to this department for review. The applicant must clarify the correct use of the structure. Requested variances must be based on the correct bulk requirements for this use in this zoning district. In order to accomplish these requirements, this application must be rejected and a new application must be filed.

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 project creates a residential density of over 55 units per acre. 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 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 variance must be disapproved.

The following comments address our additional concerns about this proposal.

4 The Town of Clarkstown is the reason this proposal was referred to this department for review. The municipal boundary is approximately 150 feet to the east of the site and is zoned R-40, Low Density Residential. 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 Clarkstown Planning Board has reviewed this application and issued comments in their letter of February 15, 2018. The Board found that the proposal will result in an over-utilization of the property, which could affect the health, safety and welfare of the residents, exacerbate existing traffic problems, strain the water supply, and create fire safety issues. The areas of countywide concern noted above that directly impact the Town of Clarkstown must be considered and satisfactorily addressed.

40 OSTILLA AVENUE (NS-6U)

5 The site plan provided has been reduced in size and is not to scale. A full-sized, to-scale map must be provided. It must contain map notes that include district information and a vicinity map with a north arrow and scale.

6 The applicant must comply with all comments made by the Rockland County Department of Health in their letter of February 13, 2018.

7 As shown, the proposed residential building will require a variance from the New York State Uniform Fire Prevention and Building Code since the cantilevered walls 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.

8 A review must be completed by the County of Rockland Sewer District #1 and all required permits obtained from them.

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 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.

11 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
New York State Department of State

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

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.

40 OSTILLA AVENUE (NS-6U)

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.