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: 42.19-3-30

Re: GENERAL MUNICIPAL LAW REVIEW: Section 239 L and M
Map Date: 10/9/2018 **Date Review Received:** 10/22/2018

Item: ***42 REAGAN ROAD (NS-23A)***

A variance application to allow two-lot subdivision of a 0.20-acre corner lot in the LDR zoning district and the construction of two semi-attached, two-family dwellings (four units total). Variances are required for lot area, side yard, rear yard, and rear yard clear for both lots; and lot width for lot 2.

The northern and eastern side of Reagan Road, as the road curves, approximately 200 feet west of Stern Street.

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 Although the proposed structure in the current application does not vary significantly from a previously approved application, 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. 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 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 are 59% and 45% of the required minimums. The lot width for lot 2 is deficient by 39%. 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 following comments address our additional concerns about this proposal.

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

4 As per the January 22, 2018 letter from the Rockland County Department of Health, an application must be made to them for compliance with the County Mosquito Code if a stormwater management system is required.

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

6 The Village of New Hempstead is one of the reasons this proposal was referred to this department for review. The municipal boundary is approximately 180 feet to the west of the site. 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 county-wide 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 which 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.

7 The bulk table is inconsistent with the variances requested on page 10 of 12 of the application review form. Lot 2 is proposed to have a side yard of zero feet, not ten feet with eight feet clear. The bulk table indicates that the rear yard requirements for lot 1 are not applicable. Since lot 1 is a corner lot, the applicant may apply the standard requirements of 20-foot rear yard with a 10-foot allowance for decks and a side yard of 10 feet; or elect to utilize 15-foot side and rear yards, maintaining 10 feet clear for each yard. Based on the requirements provided on page 10 of the application review form, the applicant is using the standard requirements. In either case, however, rear yard and rear yard clear variances are required for lot 1. Lastly, any previously granted bulk variances are not applicable to the current proposal, as they were granted to the property prior to being subdivided. Since the original lot will no longer exist after it is subdivided, variances granted for that lot cannot be applied to the newly created lots. The bulk table must be corrected. The public hearing notice must be reviewed and, if it contains inaccurate information, reissued.

8 The site plan must be stamped by the engineer.

9 The application form incorrectly lists the water district as United Water, not Suez. The application form must be corrected.

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10 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.

11 Public sewer mains requiring extensions within a right-of-way or an easement shall be reviewed and approved by the Rockland County Department of Health prior to construction.

12 The proposed residential building must comply with all requirements of the New York State Uniform Fire Prevention and Building Code. All sidewalks, entrances, terraces and porches, and dumpster/refuse containment areas must be shown on the map to ensure that there is sufficient access to the building for firefighting purposes. As shown, the proposed residential building will require a variance from the New York State Uniform Fire Prevention and Building Code since the proposed deck is located closer than ten feet of the property line.

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 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.

15 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 Sewer District #1
Rockland County Drainage Agency

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.

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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.