

DEPARTMENT OF PLANNING

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Douglas J. Schuetz
Acting Commissioner

Arlene R. Miller
Deputy Commissioner

January 2, 2018

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

Tax Data: 50.07-2-18

Re: GENERAL MUNICIPAL LAW REVIEW: Section 239 L and M

Map Date: 9/21/2013

Date Review Received: 12/11/2017

Item: *M&S KOLEL GROCERY (NS-22A)*

A variance application to allow a two-lot subdivision of 0.64 acres in the R-2 zoning district, with an existing commercial building to remain on Lot 2. Variances are requested for rear yard, side yard, and lot width.

The southwestern corner of Osterh Boulevard and Jefferson Avenue.

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***

This variance application lacks the necessary information to properly evaluate it. Specifically, no information has been given regarding the current use of the existing building and the required parking for the site. The first floor appears to be a retail grocery use, with an unknown use on the second floor. The proposed subdivision would remove parking from the lot with the existing building, and remove one of the two access points. Without having more information about the uses within the existing building, it is impossible to determine the impact on the neighborhood of this proposal or the parking requirements. In addition, this department has questions regarding the origins of the existing building. The property is located in the R-2 zoning district, which only allows residential buildings as a permitted use. Aerial photographs indicate that the lot was undeveloped in 2004, and a building, with no site improvements, existed in 2007. The building, as it currently exists, would have required variances for its use and bulk. This is the first General Municipal Law review request received by this department. We question how a non-conforming commercial use, in a non-conforming structure, was allowed to be constructed without having gone through the proper review process. Lastly, Article V, Section 3 of the New

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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. The variance application must be disapproved.

The following comments address our additional concerns about the project.

1 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 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.

2 Two trailers and a freezer are shown on Lot 1. Accessory uses or structure cannot exist without a principal use. The site plan must show they will be removed.

3 The site plan must contain parking calculations and a parking plan for all uses remaining within the existing building on Lot 2.

4 The bulk table shows the requirements for the R-1 zoning district, not R-2. The bulk table must be corrected. Any additional variances required as a result of using the correct bulk standards must be listed and reviewed. The public hearing notice must be updated and re-issued.

5 The date of the site plan does not match the date given in the note certifying the date of survey. This discrepancy must be corrected. The site plan must include a vicinity map, with a scale and north arrow, and the notes must contain district information. Note #3 must specify the zoning district.

6 The Town of Ramapo is the reason this proposal was referred to this department for review. The municipal boundary is approximately 360 feet south of the property. As required under Section 239nn of the State General Municipal Law, the Town of Ramapo must be given the opportunity to review the proposed subdivision and provide any concerns related to the project to the Village of New Square.

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

8 As per the December 13, 2017 letter from the Rockland County Department of Health, should a stormwater management system be required, an application must be made to them for compliance with the County Mosquito Code.

9 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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10 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 Drainage Agency
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.

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.

