Rockland County

Ed Day, Rockland County Executive

DEPARTMENT OF PLANNING
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Douglas J. Schuetz
Acting Commissioner

Arlene R. Miller
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April 12, 2019

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

Tax Data: 50.07-2-12.2

Re: GENERAL MUNICIPAL LAW REVIEW: Section 239 N
Map Date: 3/4/2019 **Date Review Received:** 3/15/2019

Item: ***3-5 OSTEREH BOULEVARD (NS-6AA)***

A two-lot subdivision of a 0.33 acre parcel with an existing structure in the C-2 zoning district. Variances are requested for lot area, lot width, side yard, and side yard clear for lots 1 and 2, and for rear yard clear for lot 1.

The eastern side of Ostereh Boulevard, approximately 95 feet north of Truman Avenue.

Reason for Referral:

Towns of Ramapo and 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 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 and widths are 89% and 92% of the required minimums, respectively. The proposed subdivision will result in side yards of zero feet. 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 property must be developed in a manner that is consistent with the Village's regulations.

3 Based on aerial photographs maintained by the County, the existing structure did not exist as late as 2007 and was under construction in 2010. This structure is non-conforming for side and rear yards, and would have required a variance and GML review prior to its construction. This department has no record of having received a request for review by the Village. The legality of the existing structure must be established prior to any subsequent approvals. This application must be disapproved until the requirements of General Municipal Law have been met.

4 The site plan and application do not contain any information regarding the number of units in the existing structure, or how many units will be on each proposed lot. Basic information regarding the proposed use of the structure must be provided. A revised application must be submitted that contains this information.

5 Village regulations require parking spaces to be at least 22 feet long. The parking areas on both proposed lots are deficient in length and, therefore, do not provide any compliant parking spaces. Adequate and compliant on-site parking must be provided.

6 The bulk table gives the incorrect requirements for residential uses in the C-2 zoning district. The Table of Bulk requirements indicates that the bulk requirements for Multi-family residences in the R-2 zoning district are the applicable requirements for residential uses. For a three-story structure, the required side yard is 20 feet, the rear yard is 40 feet, and 1.5 parking spaces are required for each dwelling unit. Bulk requirements for the C-2 zoning district do not have separate "clear yard" categories. Article 3.3.9. states that a paved terrace is exempt from yard requirements, but open or enclosed porches are not. Applying the correct bulk standards requires additional and substantially larger bulk variances than what has been requested. Therefore, this application must be disapproved. A revised application, with the correct bulk requirements, must be made and submitted to this department for review.

The following comments address our additional concerns about this proposal.

7 The Towns of Ramapo and Clarkstown are the reason this proposal was referred to this department for review. The Ramapo boundary is approximately 285 feet south of the parcel, and the Clarkstown boundary is approximately 400 feet east 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 Town of Clarkstown has reviewed this proposal. The Town of Ramapo must also 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.

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8 The Town of Clarkstown Planning Board reviewed this proposal at their March 27, 2019 meeting. All comments and concerned raised in their letter of March 27, 2019 must be addressed.

9 The applicant must comply with all comments made by the Rockland County Sewer District No. 1 in their letter of March 26, 2019.

10 As required by the Rockland County Stream Control Act, the subdivision plan must be reviewed and signed by the Chairman of the Rockland County Drainage Agency before the County Clerk can accept the plan to be filed.

11 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.

12 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.

13 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 Drainage Agency
Rockland County Sewer District #1

Anthony R. Celentano P.L.S.
Town of Ramapo Planning Board
Town of Clarkstown 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.