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 8, 2019

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

Tax Data: 50.07-2-15.621

Re: GENERAL MUNICIPAL LAW REVIEW: Section 239 L and M
Map Date: 1/30/2019 **Date Review Received:** 2/7/2019

Item: ***31 OSTILLA AVENUE (NS-6Z)***

A variance application to allow the construction of an attached, two-family dwelling on 0.09 acres in the C-2 zoning district. Variances are requested for side yard and rear yard.
The western side of Ostilla Avenue, approximately 400 feet north of Berdichev Way.

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 The bulk requirements in the table for the two-family residence do not match the Village requirements for 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 this proposal, the required lot width is 60 feet. For a three-story, two-family residence, the required front and side yards are 20 feet, rear yard is 40 feet, and 3 parking spaces are required. Not only is the bulk table incorrect, but the variances as requested are not sufficient to allow this proposal. A variance for parking is required. 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. The proposed side yard for the southern property line is six feet, not 10 feet, as indicated in the bulk table. Applying the correct standards requires additional and substantially larger bulk variances than what has been requested. The area variance application must be amended to reflect the correct requirements, and the public hearing notice must be re-issued. This application cannot proceed until the discrepancies are corrected and the related required variances determined.

31 OSTILLA AVENUE (NS-6Z)

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 side yard is zero feet. The proposed rear yard is deficient by 88%. 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. A reduced residential structure that complies with all zoning standards must be submitted.

The following comments address our additional concerns about this proposal.

3 The Town of Clarkstown is the reason this proposal was referred to this department for review. The municipal boundary is approximately 260 feet to the east of the parcel, 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 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 Town of Clarkstown must be considered and satisfactorily addressed, as well as any additional concerns about the proposal.

4 As per the December 26, 2018 letter from the Rockland County Department of Health, an application is to be made to them for compliance with the County Mosquito Code, should the village require a stormwater management system.

5 The applicant must comply with all comments made by the Rockland County Sewer District No. 1 in their letter of December 10, 2018.

6 The parking area requires vehicles to back out on the roadway, which creates a hazard for motorists and pedestrians. The parking area must be reconfigured to provide an adequate turnaround area.

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

8 Map note 7 must be corrected to refer to section 239m of the General Municipal Law.

9 The proposed residential building must comply with all requirements of the New York State Uniform Fire Prevention and Building Code. All sidewalks, stairs, decks, and window wells must be shown on the site plan to ensure that there is sufficient access to the building for firefighting purposes.

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.

31 OSTILLA AVENUE (NS-6Z)

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

Anthony R. Celentano P.L.S.
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.