Rockland County

Ed Day, Rockland County Executive

DEPARTMENT OF PLANNING
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Douglas J. Schuetz
Acting Commissioner

Arlene R. Miller
Deputy Commissioner

February 21, 2019

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

Tax Data: 50.07-2-15.613

Re: GENERAL MUNICIPAL LAW REVIEW: Section 239 L and M
Map Date: 1/2/2019 **Date Review Received:** 1/18/2019

Item: ***50-52 OSTILLA AVENUE (NS-33A)***

A variance application to allow a two-lot subdivision of 0.19 acres in the C-2 zoning district, and the subsequent construction of an attached, two-family residence on lot 2. Variances are requested for lot area, lot width, and side yard.

The eastern side of Ostilla Avenue, approximately 180 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 The existing lot is comprised of 8,085 square feet, which is only 85 square feet larger than the minimum lot size required by the C-2 zoning district for this use. The existing lot width is only 25% greater than the minimum requirement of 60 feet. The proposed two lots will be deficient in lot area by almost half. The County has concerns about not just the overdevelopment of this specific property, but for the precedent set by this development. The surrounding neighborhood is characterized by similarly-sized parcels. Granting these bulk variances will set a precedent that may result in nearby property owners seeking the same relief. A doubling of the residential density in this neighborhood will negatively impact its community character. Additional residents will generate more traffic on the local streets, leading to congestion and traffic conflicts.

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2 The site plan incorrectly identifies the zoning district of the parcel as LDR, not C-2. As a result, 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 lot with a three-story, two-family residence, such as the one proposed on lot 2, the required front and side yards are 20 feet, the rear yard is 40 feet, lot width is 60 feet, and 3 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. In addition to the requested variances of lot size, lot width, and side yard, variances for the rear yard and number of parking spaces are necessary to allow this project. Furthermore, side yard distances must be measured to the cantilevered living space on the second and third floors, based on the village's definition of a yard. Lastly, 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. Therefore, this application must be disapproved. A revised application, with the correct bulk requirements, must be made and submitted to this department for review.

3 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 50.5% of the required minimums. 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.

4 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 existing property is a conforming lot that can be fully developed within the limits of current zoning regulations, which includes four-unit multifamily structures as a permitted use. The variance must be disapproved, along with the subdivision.

The following comments address our additional concerns about this proposal.

5 Map note 3 must be corrected to indicate that the zoning district is C-2, and the parcel must be centered within the vicinity map.

6 The applicant must comply with all comments made by the Rockland County Sewer District No. 1 in their letter of February 6, 2019.

7 As per the February 6, 2019 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.

8 The Town of Clarkstown Planning Board reviewed this proposal at their January 23, 2019 meeting. All comments and concerns raised in their letter of January 24, 2019 must be addressed.

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

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10 The proposed residential building must comply with all requirements of the New York State Uniform Fire Prevention and Building Code. As shown, the proposed residential building may require a variance from the New York State Uniform Fire Prevention and Building Code since the proposed cantilevered walls are located closer than ten feet to the property line.

11 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.

12 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 State
Rockland County Department of Health
Rockland County Sewer District #1

Anthony R. Celentano P.E.
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.