



# Rockland County

Ed Day, Rockland County Executive

## DEPARTMENT OF PLANNING

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**Douglas J. Schuetz**  
*Acting Commissioner*

**Arlene R. Miller**  
*Deputy Commissioner*

July 26, 2019

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

**Tax Data:** 50.07-2-15.613

**Re: GENERAL MUNICIPAL LAW REVIEW:** Section 239 N

**Map Date:** 4/8/2019

**Date Review Received:** 7/10/2019

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

A two-lot subdivision of 0.19 acres in the C-2 zoning district. An attached, two-family residence is proposed for lot 2. Variances were previously granted for lot area and lot width for both lots, and for side yard and side yard clear for the proposed structure on lot 2. Additional variances are required for rear yard and rear yard clear.

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 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 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 This subdivision requires extensive variances in order to be permitted. 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. This application must be denied and the property developed in a manner that is consistent with the Village's regulations.

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. For the proposed structure on lot 2, the southern side yard is deficient by 60% and the northern side yard is zero feet. The rear yard is deficient by 87%. 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 The Village's Table of Bulk Regulations indicates that the 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, and three parking spaces are 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. Based on the Village's definition of a yard, the side yard must be measured to the cantilevered living space and the rear yard to the rear deck. The bulk table must be amended to indicate the correct side yard requirement, and the proposed side and rear yard distances measured as required by the Village's regulations. In addition, variances are not required for number of stories or number of parking spaces. The bulk table must be amended to indicate that these variances are not required.

6 An updated review must be completed by the County of Rockland Department of Health and all required permits obtained from them.

7 An updated review must be completed by the County of Rockland Sewer District No. 1 and all required permits obtained from them.

8 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.

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9 The Town of Clarkstown is the reason this proposal was referred to this department for review. The municipal boundary is approximately 240 feet east 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 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.

10 Prior to the start of construction or grading, a soil and erosion control plan shall be developed and in place for the entire site that meets the latest edition of the New York State Standards for Urban Erosion and Sediment Control.

11 There shall be no net increase in the peak rate of discharge from the site at all design points.

12 Water is a scarce resource in Rockland County; thus proper planning and phasing of this project are critical to supplying the current and future residents of the Villages, Towns, and County with an adequate supply of water. A letter from the public water supplier, stamped and signed by a NYS licensed professional engineer, shall be issued to the municipality, certifying that there will be a sufficient water supply during peak demand periods and in a drought situation.

13 If any public water supply improvements are required, engineering plans and specifications for these improvements shall be reviewed by the Rockland County Department of Health prior to construction. In order to complete an application for approval of plans for public water supply improvements, the water supplier must supply an engineer's report pursuant to the "Recommended Standards for Water Works, 2003 Edition," that certifies their ability to serve the proposed project while meeting the criteria contained within the Recommended Standards for Water Works. These standards are adopted in their entirety in 10 NYCRR, Subpart 5-1, the New York State regulations governing public water systems. Further, both the application and supporting engineer's report must be signed and stamped by a NYS licensed professional engineer and shall be accompanied by a completed NYS Department of Health Form 348, which must be signed by the public water supplier.

14 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.

15 The turnaround area provided is inadequate. An adequate turnaround area must be provided to prevent vehicles from backing into the roadway.

16 The subject parcel must be centered within the vicinity map.

17 Two bulk tables are provided for each of the two proposed lots. Two of the tables are labelled "1967 CODE". The site plan must be amended to include additional notes that clarify the purpose of the additional tables, and clearly establish which bulk requirements are correct.

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18 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.

19 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.

20 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  
Rockland County Drainage Agency  
  
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.*