Rockland County

Ed Day, Rockland County Executive

DEPARTMENT OF PLANNING
Dr. Robert L. Yeager Health Center
50 Sanatorium Road, Building T
Pomona, New York 10970
Phone: (845) 364-3434 Fax: (845) 364-3435

Douglas J. Schuetz
Acting Commissioner

Arlene R. Miller
Deputy Commissioner

October 4, 2019

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

Tax Data: 42.19-3-32

Re: GENERAL MUNICIPAL LAW REVIEW: Section 239 N
Map Date: 5/17/2019 **Date Review Received:** 9/6/2019

Item: ***61 MEZRITCH ROAD (NS-40)***

A two-lot subdivision of 0.19 acres in the LDR zoning district. A two-family dwelling is proposed for each lot. Variances are required for lot area and lot width for both lots, and front yard clear and side yard clear for lot 2.

The southern side of Mezritch Road, approximately 90 feet west of Slavita Road

Reason for Referral:

North Main Street (NYS Route 45), Village of New Hempstead

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 for the purpose of dividing ownership of a property. There are legal methods of dividing ownership of real property other than by 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 type of subdivision has set a precedent that has resulted in nearby property owners to seek the same relief. This results in a proliferation of non-conforming lots and structures, along with a significant increase in residential density that negatively impacts 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.

61 MEZRITCH ROAD (NS-40)

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 existing lot has only 8,400 square feet and a lot width of 70 feet, exactly the minimum required for the LDR zoning district. The proposed two lots will provide only 43% and 57% of the required minimum lot size and width. Both lots will have a side setback of zero feet along the shared property line. The front yard clear and side yard clear for lot 2 will be deficient by 6% and 20%, respectively. 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 application must be denied and the property developed in a manner that is consistent with the Village's regulations.

3 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 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, and subsequent subdivision application, must be disapproved.

The following comments address our additional concerns about this proposal.

4 The Village of New Hempstead is one of the reasons this proposal was referred to this department for review. The municipal boundary is approximately 270 feet west 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 Village of New Hempstead 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 Village of New Hempstead must be considered and satisfactorily addressed, as well as any additional concerns about the proposal.

5 A review shall be completed by the New York State Department of Transportation and any required permits obtained.

6 As per the September 19, 2019 letter from the Rockland County Department of Health, an application must be made to them for compliance with the County Mosquito Code should the Village require a stormwater management system.

7 The applicant must comply with all comments made by the Rockland County Sewer District No. 1 in their letter of September 10, 2019.

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.

61 MEZRITCH ROAD (NS-40)

9 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.

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

11 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.

12 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.

13 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.

14 A five-foot sidewalk easement encroaches upon two parking spaces. The parking area must be relocated so that it does not conflict with the sidewalk easement.

15 A turnaround area must be provided for the parking area so that vehicles are not forced to back into the roadway.

16 A catch basin is located within the accessway. The site plan must indicate that the catch basin will be relocated or the accessway must be reconfigured so that the two structures are separated.

17 The garbage enclosures must be relocated so that they comply with yard requirements, do not impede the maneuvering of vehicles, and are accessible for pick-up when all parking spaces are occupied.

18 The bulk table and application review form do not indicate a side yard variance is required for either proposed lot, only a side yard clear variance for lot 2. The proposed attached dwellings have side yards of zero feet along the shared property line. The bulk table and application review form must be corrected. The public hearing notice must be reviewed and, if it contains inaccurate information, re-issued.

19 The site plan indicates that the both proposed structures will have three stories and floor area ratios of 100%. However, the site plan shows a building footprint of approximately 1,400 square feet on lot 1 and 2,100 square feet on lot 2. Assuming each story will have a gross floor area equal to the footprint, the proposed structures will have overall gross floor areas of approximately 4,200 square feet on lot 1 and 6,300 square feet on lot 2. The resulting FARs for lots 1 and 2 would be 117% and 131%. Although these are estimates, they exceed the proposed FARs by 17% and 31%. The magnitude of this discrepancy requires further attention. The applicant must positively demonstrate that the proposed structures will conform to the Village's FAR requirement; an FAR calculation must be provided on the site plan, including a floor by floor tally of gross floor area. If the FAR exceeds the allowable 100%, the bulk table must be amended and an additional variance must be obtained.

61 MEZRITCH ROAD (NS-40)

20 As shown, the proposed residential building may require a variance from the New York State Uniform Fire Prevention and Building Code since the proposed structure is located closer than ten feet to the property line.

21 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.

22 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.

23 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
New York State Department of Transportation
Rockland County Drainage Agency

Anthony R. Celentano P.E.
Village of New Hempstead 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.