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 15, 2019

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

Tax Data: 42.19-3-69

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

Item: ***SIGLER RESIDENCE - 46 SLAVITA ROAD (NS-12M)***

A variance application to allow a two-lot subdivision, and the subsequent construction of an attached, three-family dwelling on lot 2, of a 0.20-acre parcel in the LDR zoning district. Variances are requested for lot area and lot width for both lots 1 and 2, and side yard for the proposed structure on lot 2.
The eastern side of Slavita Road, approximately 200 feet south of Fastov Avenue

Reason for Referral:

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

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 The existing lot has 8,880 square feet and is 74 feet wide. This is only 6% larger and wider than the minimum standard of all as-of-right uses in the LDR zoning district. The proposed two lots will provide only 53% of these requirements. 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 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. In addition, any future development will likely require additional bulk variances to accommodate such undersized parcels. 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 lots have only 53% of the required lot area and width. The creation of an attached structures requires a side yard of zero feet, with only 80% of the required yard provided on the other side. 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 following comments address our additional concerns about this proposal.

4 The Town of Ramapo and the Village of New Hempstead are two of the reasons this proposal was referred to this department for review. The Ramapo boundary is approximately 250 feet north and 275 feet east of the parcel. The New Hempstead boundary is approximately 480 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 Town of Ramapo and 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 these municipalities 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 The applicant must comply with all comments made by the Rockland County Department of Health in their letter of February 6, 2019.

7 The applicant must comply with all comments made by the Rockland County Sewer District No. 1 in their letter of February 5, 2019.

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8 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.

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

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.

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
New York State Department of Transportation
Rockland County Department of Health
Rockland County Sewer District #1

Anthony R. Celentano P.E.
Town of Ramapo Planning Board
Village 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.