



COUNTY OF ROCKLAND
DEPARTMENT OF PLANNING

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C. SCOTT VANDERHOEF
County Executive

THOMAS B. VANDERBEEK, P.E.
Commissioner

December 10, 2013

ARLENE R. MILLER
Deputy Commissioner

Ramapo Zoning Board of Appeals
237 Route 59
Suffern, NY 10901

Tax Data:	50.09-3-9	50.09-3-8	50.09-3-7	50.09-3-6	50.09-3-5	50.09-3-4
	50.13-3-8	50.13-3-7	50.13-3-6	50.13-3-5		

Re: GENERAL MUNICIPAL LAW REVIEW: Section 239 L and M

Map Date: 4/5/2013

Date Review Received: 11/8/2013

Item: AVON GARDEN EAST (R-2365A)

Use variance to allow the construction, maintenance and use of a multi-family development consisting of 54 units in three buildings on 4.28 gross acres (2.14 net acres) in an R-15 zoning district. The applicant proposes to use the MR-16 zoning district bulk standards. Several area variances will be required including lot area, front setback, front yard, side setback, side yard, maximum development coverage, floor area ratio, density and parking.

Northeast side of Viola Road, 275 feet north of Zuba Lane

Reason for Referral:

Viola Road, Eckerson Road, Villages of New Hempstead and Spring Valley, State and Federal wetlands
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 This department is not generally in favor of granting use variances because of the land use precedent that can be set. The subject site is zoned R-15, a medium density residential district characterized by one- and two-family residences. The maximum residential density permitted in the R-15 zoning district ranges from 2.9 units per acre for detached, single-family residences to 4.4 units per acre for semi-attached, single-family residences and detached, two-family residences. While the proposed density of 25 units per acre is a reduction from the original proposal of 30 units per acres, it still represents an almost six-fold increase over the permitted R-15 maximum.

The municipal border of the Village of New Hempstead is along the northern and eastern property lines of the subject site. The area to the north is zoned 1R-40, a one-family residence district with a 40,000 SF minimum lot area requirement. To the east and northwest is a 2R-15 zoning district which is similar to Ramapo's R-15 zoning district. One-family residences are permitted on 15,000 SF lots; detached two-family residences have a 20,000 SF minimum lot area requirement. A golf

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course is situated to the north of the site, single-family residences are located to the northwest, and the properties to the east are undeveloped.

The Village of Spring Valley is approximately 350 feet west of the site. This area is zoned R-3, a medium-high density residential district that permits multi-family housing in addition to one- and two-family residences. The maximum permitted residential density is 18 units per acre. A multi-family housing development is located on the corner of Union Road and Viola Road in Spring Valley. Another multi-family housing development is on Eckerson Road and Ibeck Court in Spring Valley, approximately 570 feet southeast of the site. Multi-family housing is also located on the lot to the southwest of the site in unincorporated Ramapo.

While multi-family housing is permitted within the vicinity of the subject site, the immediately adjacent properties contain single-family residences or vacant land. The housing proposed on this site is much denser than the adjoining single-family neighborhoods, and the outlying multi-family housing developments. Granting a use variance to permit denser residential development will set a precedent for property owners of nearby vacant or under-developed parcels to seek the same relief, thereby changing the character of the surrounding community. The Town must evaluate whether denser residential development is appropriate for this area. A comprehensive analysis of the existing land uses, infrastructure capacity, traffic patterns, environmental constraints and other pertinent factors must be undertaken to determine if a zone change is a more suitable option for this site. Any increase in density should be transitional in nature. Twenty-five units per acre is excessive. If the Town believes that denser residential development is appropriate for this site, then the zoning ordinance should be amended accordingly. This is a more logical land use planning technique than the granting of use variances.

2 The standards for granting a use variance are very specific. An applicant must prove unnecessary hardship in order for a use variance to be granted. The Otto test requires the demonstration of all of the following:

- A. The applicant cannot realize a reasonable return, provided the lack of return is substantial as shown by competent financial evidence.
- B. The alleged hardship is unique and does not apply to a substantial portion of the district or neighborhood.
- C. The requested variance will not alter the essential character of the neighborhood.
- D. The alleged hardship is not self-created.

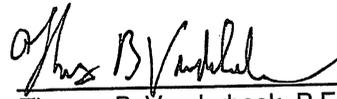
The applicant has not adequately demonstrated that an unnecessary hardship exists. The use variance shall not be granted.

3 This site is subject to extensive environmental constraints. More than half of the total land area is comprised of New York State Department of Environmental Conservation wetlands and the required 100-foot buffer zone. As a result, less than half of the site can be developed. The net lot area calculations yield an effective lot area of 2.14 acres. A minimum lot area variance of 46.5 percent is therefore required. Several yard and setback variances are also necessary. The maximum development coverage is exceeded by 26 percent; a 25 percent variance is required for floor area ratio. This proposal will result in an overutilization of the site as evidenced by the number and magnitude of the variances. The applicant must develop an alternative proposal that complies with the existing R-15 zoning.

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4 Permitting development that does not comply with the applicable use or bulk standards can set an undesirable land use precedent and result in the overutilization of individual sites. This proposal requires a use variance and several significant area variances. The ability of the existing infrastructure to accommodate increased residential density on non-conforming, environmentally constrained sites 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 Town must consider the cumulative and regional impacts of permitting such development.

5 The GML referral form and the application form do not list Lot 50.09-3-9. The Building, Planning and Zoning Department's October 17, 2013 letter incorrectly specifies Section 50.13 instead of Section 50.09 for Block 3, Lots 4, 5, 6, 7, 8 and 9. The site plan does not include the lot numbers for any of the ten parcels that comprise this site. All application materials must be consistent.



Thomas B. Vanderbeek, P.E.
Commissioner of Planning

cc: Supervisor Christopher St. Lawrence, Ramapo
Rockland County Department of Highways
New York State Department of Environmental Conservation
United States Army Corps of Engineers
Rockland County Department of Health
Rockland County Drainage Agency
Rockland County Sewer District #1
Rockland County Office of Fire and Emergency Services
Hartman Design
Villages of New Hempstead and Spring Valley
New York State Department of State,
Division of Code Enforcement and Administration
Julius Bernard

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.

