COUNTY OF ROCKLAND

DEPARTMENT OF PLANNING

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September 11, 2014

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

Tax Data: 56.20-3-38

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

Map Date: 6/12/2014 **Date Review Received:** 8/8/2014

Item: ***BINYAN TORAH, INC./50-52 DYKSTRA'S WAY EAST (R-1453R)***

Use variance to allow the addition of two accessory apartments to an existing two-family residence on .2394 acres in an R-15A zoning district. Bulk variances are also required for lot area, lot width, front yard, side setback, total side setback, side yard, floor area ratio and parking.

North side of Dykstra's Way East and south side of Old Nyack Turnpike, approximately 445 feet west of the intersection of Dykstra's Way East and Old Nyack Turnpike

Reason for Referral: Old Nyack Turnpike (CR 52), NYS Thruway, Villages of Chestnut Ridge & Spring Valley

The Rockland County Department of Planning has reviewed the above item. Acting under the terms of the above GML powers and those vested by the Rockland County Charter, I hereby:

***Disapprove**

The subject site was referred to this department for a GML review in March of 2004. A semi-attached, two-family residence was proposed. The zoning designation at that time was R-15 and a use variance and several bulk variances were required for the proposed use. This department recommended disapproval because of the land use precedent that would be set. In our opinion, the doubling of the maximum permitted residential density was not consistent with the goals and objectives of the Town's Comprehensive Plan.

In June of 2004, the applicant proposed a detached two-family residence on this undersized parcel. This department again recommended disapproval. We believed that doubling the maximum permitted residential density would have a significant impact on the county road and the adjacent municipalities. The proposal did not reflect the Town's vision of a medium density residential district for this area. It was not consistent with the Comprehensive Plan's recommended residential density of three to four dwelling units per acre. The Town Zoning Board of Appeals however, overrode our disapproval, and the variances required for this proposal were granted and a detached two-family residence was constructed.

The applicant is now seeking to double the residential density by adding two accessory apartments to the existing two-family residence. This proposal will result in a density of almost 17 units per acre, or 2.56

times the maximum permitted in the R-15A zoning district for a two-family residence with one accessory apartment. This represents a 156 percent increase over the maximum permitted residential density.

This department is not in favor of granting use variances because of the land use precedent that will be set. The applicant is seeking the same relief for twelve additional parcels, all of which are smaller than the subject site. The variances required to construct a detached two-family residence on each of these twelve parcels were also previously granted. Each site now requires numerous area variances, and the building department's denial letter understates the variances needed for this site, as a side yard variance also seems to be required. (The Town must review the public hearing notice to ensure that all of the required variances are stated correctly for this lot.) Many lots do not have street frontage. Most require a variance for maximum development coverage and they all exceed the maximum permitted floor area ratio. The on-site parking requirement is not achieved for the current proposal. Only one additional parking space is proposed for the additional 26 units on the 13 residential properties. Aerial photography taken in 2013 shows vehicles parked in most of the parking spaces, in the turnaround areas and along the access drive on the west side of the property. If the parking currently provided is heavily utilized, it is unlikely that it will be sufficient for 26 additional households.

Doubling the residential density on thirteen undersized, non-conforming lots will negatively affect the community character of the surrounding neighborhoods. Though the narrative states that the community area is diverse, citing two multi-family developments, the neighborhoods directly adjacent to the site are all comprised of single or two-family residences. The impact on the existing infrastructure will be significant. The proposed density also gives rise to concerns about the provision of emergency services and compliance with New York State Fire and Building Codes. Permitting development that does not comply with the applicable bulk standards will result in the overutilization of individual sites. The ability of the existing infrastructure to accommodate this increased residential density on non-conforming 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 Town must consider the cumulative and regional impacts of permitting such development.

As noted above, this department is not generally in favor of granting use variances because of the land use precedent that can be set. An applicant must prove that applicable zoning regulations and restrictions have caused unnecessary hardship in order for a use variance to be granted. In order to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located:

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 demonstrated that an unnecessary hardship exists. No financial evidence was presented. The use variance to allow a second accessory unit shall not be granted. We further recommend that the proposal for any additional units be denied. The 13 existing two-family residences are all located on significantly undersized lots and required numerous bulk variances when initially proposed. The Town must not permit an exacerbation of an existing non-complying situation.

Douglas J. Schuetz
Acting Commissioner of Planning

C: Supervisor Christopher St. Lawrence, Ramapo
Rockland County Department of Highways
New York State Thruway Authority
Rockland County Department of Health
Rockland County Drainage Agency
Rockland County Sewer District #1
Rockland County Office of Fire and Emergency Services
Sparaco & Youngblood, PLLC
Villages of Chestnut Ridge & Spring Valley
New York State Department of State, Division of Code Enforcement and Administration
Monsey Fire District
Binyan Torah, Inc.
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.