



**COUNTY OF ROCKLAND**  
**DEPARTMENT OF PLANNING**

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County Executive

DOUGLAS J. SCHUETZ  
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October 9, 2015

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

**Tax Data:** 56.11-2-70

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

**Map Date:** 3/25/2015

**Date Review Received:** 9/9/2015

**Item:** *ARNOLD JACOBS QUALIFIED PERSONAL RESIDENCE TRUST/53 MAIN STREET (R-2523)*

Use variance to permit the construction, maintenance and use of a three-family residence with three accessory apartments on .2205 acres in an NS zoning district. The applicant proposes to apply R-15C bulk standards.

West side of Main Street, 120 feet south of Lane Street

**Reason for Referral:**

NYS Route 306 (Main Street)

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***

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 all of these hardships exist. For example, the financial evidence referenced in Moshe Malik's June 9, 2015 letter was not included in the application

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materials submitted to this department.

In addition, a use variance is not the proper land use planning tool to permit residential development on this parcel. Rezoning is a more appropriate zoning tool to achieve the desired land uses, as bulk regulations for the zoning district provide standards that can be used to determine compliance. The site is immediately south of the R-15C zoning district. The Town must evaluate whether it is appropriate to change the zoning designation of this lot to R-15C, thereby extending the boundary of this zoning district.

Until the applicant proves that all hardships exist, and an evaluation is undertaken to determine if a zone change would be the more appropriate land use action, the use variance must not be granted.

The following comments address additional concerns about this proposal.

- 1 The applicant is seeking a use variance in order to construct a residential structure on the site. The R-15C bulk standards are proposed for this residential development. If this parcel were located in an R-15C zoning district, many variances of great magnitude would be required to construct a three-family residence with three accessory apartments. The lot is undersized requiring a minimum lot area variance of almost 36 percent. It is non-conforming in that it does not meet the minimum lot width or street frontage requirements. As a result of the non-conformities, several yard and setback variances are needed. Since the lot width is less than 75 feet, only one accessory apartment is permitted. The applicant is proposing to develop 80 percent of the land area or an increase of more than 45 percent over the permitted maximum development coverage. This proposal will result in an overutilization of the site as evidenced by the number and the extent of the variances required to implement it. Even if a use variance is granted to permit R-15C as-of-right uses or the zoning designation is changed to R-15C, the proposal must be scaled back to more closely comply to the applicable bulk standards. The building footprint must be reduced and the second and third accessory apartments eliminated.
- 2 A review shall be completed by the New York State Department of Transportation and all required permits obtained.
- 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 ability of the existing infrastructure to accommodate 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.
- 4 The proposed residential building must comply with all requirements of the New York State Uniform Fire Prevention and Building Code.
- 5 A review must be completed by the County of Rockland Office of Fire and Emergency Services, the Town Fire Inspector and the Monsey Fire District to ensure that there is sufficient maneuverability on-site for emergency vehicles.
- 6 It appears that parking space #6 is a handicapped space. It is unclear whether the access aisle is sufficiently wide. This must be clarified.
- 7 A dumpster enclosure must be shown on the site plan and easily accessible to sanitation workers. Parked vehicles must not block access.

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8 The variances required for this proposal are subject to a review by this department as mandated by the New York State General Municipal Law.

  
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Douglas J. Schuetz  
Acting Commissioner of Planning

cc: Supervisor Christopher St. Lawrence, Ramapo  
New York State Department of Transportation  
Rockland County Department of Health  
Rockland County Drainage Agency  
Rockland County Sewer District #1  
Rockland County Office of Fire and Emergency Services  
Monsey Fire District  
Civil Tec Engineering & Surveying PC  
New York State Department of State  
Division of Code Enforcement and Administration  
Jacobs Trust

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.*

