Rockland County

Ed Day, Rockland County Executive

DEPARTMENT OF PLANNING
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November 16, 2017

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

Tax Data: 50.13-3-30 50.13-3-27 50.13-3-26

Re: GENERAL MUNICIPAL LAW REVIEW: Section 239 L and M
Map Date: 10/17/2017 **Date Review Received:** 10/25/2017

Item: ***BLUEFIELD EXTENSION (R-2421D)***

Use and bulk variances to permit a four-lot subdivision of 1.05 acres in the R-15 zoning district. The proposed residential development includes a semi-attached, two family residence with two accessory apartments on Lot 1, a semi-attached, three-family residence with one accessory apartment on Lot 2; a semi-attached, three-family residence on Lot 3, and a semi-attached two-family residence with two accessory apartments on Lot 4. Semi-attached two-family residences, three-family residences and accessory apartments are not permitted uses in the R-15 zoning district. A use variance is therefore required. The application materials indicate that Lot 1 will require variances for lot width, rear setback and street frontage, as well as a Section 280A variance. Variances are also now required for floor area ratio and deck setback on Lot 1. Lot width, side setback, total side setback, rear setback, street frontage and maximum development coverage variances are required for Lot 2. A floor area ratio variance is now required for Lot 2. Lot 3 needs lot width, rear setback, street frontage and maximum development coverage variances. In addition, variances are now required for floor area ratio and deck setback on Lot 3. Lot width, rear setback, street frontage, and maximum development coverage variances are required for Lot 4. The extent of the rear setback variance has increased, and a floor area variance is also now required for Lot 4.

East side of Union Road, opposite Bluefield Drive and 360 feet south of Eckerson Road

Reason for Referral:

Village of Spring Valley, Eckerson Road (CR 74), 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**

On October 23, 2013, this department received a GML referral from the Town of Ramapo for a use variance to permit the proposed multi-family development in the R-15 zoning district. The Town and the applicant's attorney at that time, Ira Emanuel, were informed that the application contained conflicting information. As a result, the application was withdrawn from the November Zoning Board of Appeals (ZBA) agenda and adjourned to the

December meeting. This department was informed of this decision by Ira Emanuel in a November 20, 2013 email, and advised that the proper materials would be submitted to all agencies. This department did not receive any new information on this proposal until an incomplete and inaccurate subdivision application was submitted on March 4, 2014.

The Town of Ramapo ZBA, as reflected in the January 30, 2014 minutes, granted a use variance for "ten units of housing, each with one accessory apartment," contingent that the applicant plant a dense row of six-foot high trees across the western property line. A GML review was never issued for the use variance despite the reference to such a review in the January 30, 2014 ZBA resolution. A May 6, 2015 letter from the Office of the County Attorney to Deputy Town Attorney Michael B. Specht addresses this issue, requesting that the ZBA minutes be corrected and refiled with the Clerk of the ZBA. The County is not in receipt of a response to this letter issued more than two years ago. To date, the applicant is still proposing uses which are not permitted in the R-15 zoning district. Given, the new submission, we will take this opportunity to review and provide comments on the use variance, as well as the bulk variances, needed for this proposed project.

The proposed subdivision results in four oddly-configured lots that do not conform to the R-15C bulk standards, which are used as a reference for the actual R-15 zoning designation. According to the bulk table and project narrative, lot width, street frontage and rear setback variances are required for all four parcels. While it is not noted in the undated project narrative, the bulk table indicates that a floor area ratio variance is required for each structure. These new variances are needed now that basements are being proposed. Three of the four lots require maximum development coverage variances ranging from 7 to 18 percent. The bulk standard non-conformities are compounded by the fact that the townhome configuration is not a permitted use in the R-15 or R-15C zoning districts. This type of residential development is only permitted in Ramapo's multi-family and mixed-use zones. We continue to recommend that the proposed subdivision and the multi-family development be denied, and that a proposal that conforms, both in use and bulk standards, be submitted.

A proposed local law establishing a moratorium on subdivision applications in the R-15C zoning district was recently referred to this department for review. The Town clearly recognizes that the current development trends within the R-15C zone are problematic. While this assemblage is located within the R-15 zone, the layout plan for the proposed multi-family development references the R-15C bulk standards for semi-attached, two- and three-family dwellings. Given the Town's concerns about subdivisions in the R-15C zoning district, it is inadvisable to permit subdivisions in less dense residential zones subject to these more liberal standards. The Town's R-15C Moratorium Law is intended to allow for an evaluation of the land use regulations in this zone. An updated Comprehensive Plan is also under consideration. Regulating land use through use variances undermines the integrity of the Zoning Code and the Comprehensive Plan, and must not be permitted.

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. 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. The use variance shall not be granted.

This assemblage has less than 50 feet of street frontage along Union Road. This is deficient in both the R-15 and R-15C zoning districts. The 49-foot wide strip of land extends roughly 144 feet from Union Road to the remainder of the proposed subdivision area. This approximately 7,000 SF land area will primarily serve as the

access to the rear portion of the site, with angled parking provided on the north side. As such, this land area should not be included in the minimum lot area calculation for any of the proposed lots. A private road is the most appropriate use for this land area. Only the remaining land area can be factored into a minimum lot area calculation for residential development purposes. We estimate this land area to be approximately 38,800 SF. Four semi-attached single-family residences or two detached, two-family residences are the most appropriate development proposals on this portion of the site. Accessory apartments are not permitted in the R-15 zoning district. One accessory apartment is permitted on parcels with a minimum lot width of less than 75 feet in the R-15C zoning district yet the applicant is proposing two on Lot 1, one on Lot 2 and two on Lot 4. As noted above, to grant a use variance that requires multiple bulk variances undermines the integrity of the zoning ordinance, and is not an appropriate land use planning tool.

As presented, this proposal will result in a gross overutilization of the 1.05-acre site and is inconsistent with the community character of the surrounding neighborhood. A residential density of 16 units per acre is being proposed in an R-15 zoning district, where a maximum of just over four units per acre are permitted. Currently, one- and two-family residences are the predominant land use on Union Road, Ibeck Court, Stetner Street, Jacaruso Drive and Zuba Lane. While multi-family developments are located to the south and east of the subject site, and three-family, semi-attached residences make up the Bluefield Gardens development, this denser residential development is not the predominant land use. The number of lots and units must be reduced.

The following comments address our additional concerns about the variances required for this subdivision proposal.

1 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. This proposal does not conform to the R-15 or R-15C bulk standards. The ability of the existing infrastructure to accommodate increased residential density on undersized, 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. The number of residential units shall be limited to four.

2 The Villages of Spring Valley and New Hempstead are two of the reasons this application was referred to this department for review. The Spring Valley municipal boundary is along the southern property line of the site and along Union Road directly adjacent to the site, as well as 175 feet east of the site. The New Hempstead municipal boundary is 410 feet northeast of the site. 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 Villages of Spring Valley and New Hempstead must be given the opportunity to review the current proposal and its impact on community character, traffic, water quantity and quality, drainage, stormwater runoff and sanitary sewer service. In letters dated May 14, 2105 and September 29, 2017, the Village of New Hempstead Planning Board concurred with this department's previous recommendations. The board also expressed concerns about overutilization, community character and traffic. The areas of countywide concern noted above that directly impact the Villages of Spring Valley and New Hempstead must be considered and satisfactorily addressed, as well as any additional concerns about the proposal.

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3 An updated review of the October 17, 2017 drawings shall be completed by the Rockland County Highway Department, and any required permits obtained. In addition, the applicant must satisfactorily address the conditions of the Highway Department's September 27, 2017 letter.

4 An updated review of the October 17, 2017 drawings shall be completed by the Rockland County Health Department, and any required permits obtained. In addition, the applicant must satisfactorily address the conditions of the Health Department's January 17, 2017 letter.

5 An updated review of the October 17, 2017 drawings shall be completed by the Rockland County Sewer District #1, and any required permits obtained. In additon, the applicant must satisfactorily address the conditions of the Sewer District's September 28, 2017 letter.

6 The NYS Department of State has determined that the Town is not administering or enforcing the State Uniform Fire Prevention and Building Code in accordance with minimum standards set forth in 19 NYCRR part 1203. Given the concerns about the Town's administration and enforcement of the State Uniform Fire Prevention and Building Code raised in the Executive Deputy Secretary of State's letter of July 15, 2016, the proposed residential buildings must be held to the requisite minimum standards and comply with all requirements of this code.

7 A review must be completed by the Rockland County Office of Fire and Emergency Services or the Hillcrest Fire Department to ensure that there is sufficient maneuverability on site for fire trucks, in the event an emergency arises.

8 The Town of Ramapo Building, Planning & Zoning Department's June 5, 2017 denial letter includes 20 comments from the Fire Inspector that must be satisfactorily addressed.

9 Twenty-four on-site parking spaces are proposed for 15 residential units. This does not meet the R-15 standard of two spaces per unit. As stated above, the number of lots and residential units must be reduced, or additional parking spaces must be provided.

10 Sixteen angled parking spaces are shown along the north side of the access drive. These spaces are not in close proximity to any of the residential units, and their location raises concerns about pedestrian safety. The proposed play area is also far removed from the residences. The potential for conflicts between vehicles entering or exiting the site along this narrow driveway, and residents navigating on foot is great. Additional sidewalks and crosswalks must be provided to ensure the safety of residents walking to and from Union Road, parking spaces and the play area.

11 Given the deficient on-site parking, designated parking spaces must be assigned to each residential unit, and clearly identified in the field.

12 A turnaround area must be provided at the northern end of the parking area so that a vehicles can easily exit space #s 20 and 21. A second turnaround area must be provided at the southern end of the parking area so that a vehicle parked in space #24 can easily exit.

13 The bulk table indicates that floor area ratio variances are required for the residential structures on each lot due to the addition of basements. These variances are not noted in the undated project narrative submitted as part of this GML referral. Decks are now shown on the residential structures on Lots 1 and 4. As a result, the setback requirements are not achieved and additional variances are required. All application materials must be consistent. The public hearing notice will have to be reissued if it did not include all required variances.

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14 The undated project narrative specifies that multiple single-family dwellings, some with accessory apartments, are proposed on each lot. The Layout Plan also indicates ten single-family dwellings. While more than one residential structure is not permitted on lots in the R-15 or R-15C zoning districts, this description and the drawing reinforce that a townhome configuration is proposed rather than the two- and three-family structures permitted in the R-15C zoning district. The proposed five-unit structures, with accessory apartments, are not permitted, even with a use variance. The number and type of units must conform to the R-15 zoning district standards.

15 Lot 50.13-3-28 is incorrectly listed as one of the parcels comprising this assemblage on the application form, the GML referral form and the June 5, 2017 denial letter. The third parcel is 50.13-3-30. This information must be corrected. All application materials must be consistent. The public hearing notice must be reissued if it contained incorrect information.

16 The incorrect zoning designation is noted on the application form and the GML referral form. The lots are located in an R-15 zoning district. All application materials must be consistent. The public hearing notice must be reissued if it contained incorrect information.

17 Map Note # 7 must be corrected to indicate that the plat conforms to Section 239L and M of the General Municipal Law as Section 239K no longer exists.

18 Map Note # 14 must be corrected to indicate that SUEZ is the water supplier.

19 Map Note # 25 shall be eliminated as it is incorrect and repetitive of Map Note # 7.

20 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.

21 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.

22 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: Supervisor Yitzchok Ullman, Ramapo
Rockland County Department of Highways
Rockland County Department of Health
Rockland County Sewer District #1
New York State Department of State
Rockland County Office of Fire and Emergency Services

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Hillcrest Fire District

Anthony R. Celentano P.L.S.
Villages of Spring Valley and New Hempstead
Rockland County Department of Law,
Office of the County Attorney
Terry Rice
Bluefield Extension, LLC

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.