

## DEPARTMENT OF PLANNING

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**Douglas J. Schuetz**  
*Acting Commissioner*

**Arlene R. Miller**  
*Deputy Commissioner*

March 28, 2018

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

**Tax Data:** 57.07-1-1

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

**Map Date:** 6/29/2011

**Date Review Received:** 2/21/2018

**Item:** *THE COMMONS (R-2634)*

Use variance to allow a .9843-acre parcel in the R-15 zoning district to be used as a parking lot for a proposed 64-unit multi-family housing development on an adjacent .9851-acre site in Spring Valley's R-2/PRD zoning districts.

Landlocked parcel east of Rose Avenue and 116.5 feet north of the terminus of Crispus Atticus Street

### Reason for Referral:

Village of Spring Valley, Town of Clarkstown, Pascack Brook

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***

The Village of Spring Valley referred the special permit and site plan applications for the multi-family housing development proposal, and the variances required to implement it, to this department in 2010. Four separate GML reviews were issued, each recommending disapproval of the proposal. We considered it to be an overutilization of the site, particularly when only considering the Spring Valley land area. In our October 5, 2010 review of the variances, we noted that an annexation of the Ramapo parcel would reduce but not eliminate the non-conformities.

The subject site is comprised of two tax parcels separated by a municipal boundary and located within different zoning districts. The overall lot area is almost two acres but the portion of the site in Spring Valley totals .9851 acres. The extent of the required variances is magnified when only the Spring Valley land area is considered. All of the proposed parking is on the .9843- acre parcel within the Town of Ramapo.

As noted in our Spring Valley GML review of May 24, 2010, by definition, special permit uses are subject to more stringent standards than as-of-right uses. Special permit use requirements are contained in Article VII of the Village of Spring Valley's Zoning Code. General standards are outlined in Section 255-27; individual standards and requirements for special permit uses are included in Section 255-28. The Table of General Use

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Requirements for the PRD overlay district lists multi-family dwellings as a special permit use. Appendix A-6.E. outlines additional use requirements in the PRD overlay district; several are applicable to multi-family dwellings.

This proposal does not meet most of the general standards outlined in Section 255-27; it is not in compliance with Sections 255-27.A., B., C. and D. It can be argued that the proposal also does not comply with Sections 255-27.E. and F. This multi-family development proposal does not comply with several of the additional use requirements contained in Appendix A-6.E. It exceeds the maximum allowable density of 18 units per acre by almost 83 percent. The maximum number of residential units permitted on this 1.9604-acre site is 35. The buildings are a full story higher than the maximum building height allowed of three stories. The floor area ratio is 21 percent greater than the allowed maximum of .60. In addition, the proposal does not include a buffer area between the site and adjacent residential uses. In fact, the revised site plan shows extensive regrading beyond the northern, eastern and southern property lines; grading easements ranging from five to 25 feet will be required. The development coverage is extensive, leaving little or no space available for landscaping or recreational facilities. The 98 on-site parking spaces are 23.4 percent less than the required minimum of 128 spaces.

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 dense residential developments 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 dense residential development.

This proposal is not consistent with the special permit standards or the bulk requirements for multi-family housing in Spring Valley's PRD overlay district. The scale and density are not in character with the surrounding residential districts. The R-15 zoning district in the immediately adjacent Town of Ramapo is a medium density residential zone in which one- and two-family residences are allowed. The maximum permitted residential density ranges from 2.90 to 4.35 units per acre. Similar zoning exists in the Town of Clarkstown which is approximately 300 feet south of the subject site.

The proposed multi-family development must be scaled back to more closely conform to the applicable special permit standards and bulk requirements so that it is more compatible with the surrounding community character. This can be accomplished by eliminating the fourth floor of each building or reducing the building footprints so that fewer units are proposed.

The current application is for a use variance to allow the on-site parking required for the proposed 64 units on the parcel located in Ramapo's R-15 zone. As noted above, this is a medium density residential district. Given our concerns about the residential density proposed, we cannot recommend that this use variance be granted. Even if it were appropriate to include the Ramapo parcel in the minimum lot area calculation, the maximum number of residential units permitted on the 1.9604 assemblage is 35. An 83 percent increase over the permitted maximum residential density is excessive. The proposal must be scaled back. The applicant shall explore the annexation option.

The following comments address our additional concerns about the use variance.

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1 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.

While the Otto test is addressed in the project attorney's January 30, 2018 letter, the extent of the proposed development's non-conformities are not. The use variance cannot be considered in isolation. The Town of Ramapo must consider the overall proposal and its effect on the adjoining R-15 properties.

2 The Village of Spring Valley and the Town of Clarkstown are two of the reasons this proposal was referred to this department for review. The Ramapo municipal boundary is along the northern, southern and western property lines; the Clarkstown municipal boundary is approximately 430 feet south 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 Village of Spring Valley and the Town of Clarkstown 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 the Village of Spring Valley and the Town of Clarkstown must be considered and satisfactorily addressed, as well as any additional concerns about the proposal.

3 A review must be completed by the Rockland County Drainage Agency, and any required permits obtained.

4 An updated review must be completed by the Rockland County Department of Health. In addition, as indicated in their September 19, 2017 letter, a full set of the site plan must be provided to them, so that they can complete a review.

5 An updated review must be completed by the Rockland County Sewer District #1. In addition, the comments contained in their December 7, 2017 letter must be addressed.

6 A parking calculation must be provided on the site plan that specifies the on-site parking requirement for the proposed residential use. The bulk table must indicate that a parking variance is required.

  
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Douglas J. Schuetz  
Acting Commissioner of Planning

cc: Supervisor Michael B. Specht, Ramapo  
Rockland County Drainage Agency

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Rockland County Department of Health  
Rockland County Sewer District #1  
Atzl, Scatassa & Zigler P.C.  
Village of Spring Valley, Town of Clarkstown

MABY-JV, LLC

Mona Montal, Chief of Staff  
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.*