

## DEPARTMENT OF PLANNING

Dr. Robert L. Yeager Health Center  
50 Sanatorium Road, Building T  
Pomona, New York 10970

Phone: (845) 364-3434 Fax: (845) 364-3435

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

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

October 3, 2018

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

**Tax Data:** 56.15-3-42.2

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

**Map Date:** 9/7/2016

**Date Review Received:** 8/8/2018

**Item:** *NATHAN WAGSCHAL/16 FRED ELLER DRIVE (R-1807D)*

Variations for lot area, lot width, front setback (Fred Eller Road and Summit Avenue), front yard (Fred Eller Road and Summit Avenue), side setback, rear setback, maximum building height and floor area ratio to allow the construction, maintenance and use of a detached, two-family dwelling on .23 acres in an R-15A zoning district. An accessory apartment is not proposed.

Northeast corner of Fred Eller Road and Summit Avenue

### **Reason for Referral:**

Monsey Glen Park, NYS Thruway

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 first commented on this application in September of 2013. At that time, the applicant was seeking approval for a three-lot subdivision. Each lot was to be developed with a single-family dwelling containing an accessory apartment. A minimum lot area variance was required for all three parcels. The extent of the lot area variance for the subject parcel was 33 percent. The oversized residential structure proposed on Lot 2 required a 20 percent increase over the maximum permitted floor area ratio.

A minimum lot area of 20,000 SF is required for a detached, two-family dwelling in the R-15A zoning district. As a result, Lot 2 now requires a 50 percent variance from the minimum lot area standard. A larger residential structure is proposed so the extent of the floor area ratio variance has increased to 62.5 percent. The current proposal also exceeds the maximum permitted building height. These substantial, self-imposed increases in non-conformity shall not be permitted. The original approval for a detached single-family dwelling with one accessory apartment must stand, and the size of the building reduced to the original proposal.

**NATHAN WAGSCHAL/16 FRED ELLER DRIVE (R-1807D)**

2 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 applicant is seeking to increase the degree of non-conformity on Lot 2 after receiving variances for a less intense residential use. 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. We caution the Town against granting additional variances that result in a development that is less compliant with the applicable bulk standards. We raised this concern in our May 3, 2017 GML review of the adjacent property. This has the potential to set a dangerous land use precedent in which applicants propose a less intense use only to return to the Zoning Board of Appeals with a more intense use requiring greater deviations from the code.

The following comments address our additional concerns about this proposal.

3 An updated review of the current proposal for Lot 2 must be undertaken by the Rockland County Division of Environmental Resources as this parcel is approximately 55 feet south of the County park. The applicant must satisfactorily address any and all concerns raised by the Division of Environmental Resources.

4 An updated review of the current proposal for Lot 2 must be undertaken by the Rockland County Health Department and all required permits obtained. In addition, the applicant must comply with the conditions of the Health Department's letter of March 22, 2016.

5 An updated review of the current proposal for Lot 2 must be undertaken by the Rockland County Sewer District #1 and all required permits obtained. In addition, the applicant must comply with the conditions of the Sewer District's letter of March 23, 2016.

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 building must be held to the requisite minimum standards and comply with all requirements of this code.

7 It will difficult for vehicles parked in spaces 2 and 4 to maneuver out of the spots without a turnaround area given the immediately adjacent residential structure. A turnaround area must be provided so that vehicles do not have to back out into the roadway.

8 All proposed building entrances, exterior stairways and window wells must be delineated on the site plan demonstrating that they will not impact yard requirements and parking maneuverability for the site.

9 The site plan must contain map notes that list all appropriate information, including the district details.

10 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.

**NATHAN WAGSCHAL/16 FRED ELLER DRIVE (R-1807D)**

11 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 Michael B. Specht, Ramapo  
Rockland County Division of Environmental Resources  
New York State Thruway Authority  
Rockland County Department of Health  
Rockland County Sewer District #1  
New York State Department of State  
Rockland County Office of Fire and Emergency Services  
Monsey Fire District  
  
Anthony R. Celentano P.L.S.

Nathan Wagschal

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.*

