Rockland County

Ed Day, Rockland County Executive

DEPARTMENT OF PLANNING
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Douglas J. Schuetz
Acting Commissioner

Arlene R. Miller
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October 9, 2019

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

Tax Data: 49.20-2-55

Re: GENERAL MUNICIPAL LAW REVIEW: Section 239 L and M
Map Date: 8/16/2019 **Date Review Received:** 9/6/2019

Item: ***REGINA KIZELNIK (R-2699)***

Variances to permit the construction of a three-family dwelling with three accessory apartments located on 0.26 acres in the R-15C zoning district. The variances requested include total side setback, rear setback, maximum development coverage, floor area ratio, two handicap accessible units instead of 3, and accessory apartments greater than 1,200 SF. Variances for lot area and lot width have previously been granted.
North side of Lenore Avenue, approximately 375 feet east of Phyllis Terrace

Reason for Referral:

Village of Kaser

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 Section 376-65B. of the Ramapo Zoning Code pertains to "accessory" apartments rather than "accessible" apartments as the project narrative mentions. As noted on the bulk table, the applicant is seeking a variance for two, rather than three, accessible apartments. The project narrative also mentions that two accessible units were included instead of three because there would not be sufficient room for another handicap accessible unit. Handicap accessibility usually requires wider doorways and other similar accommodations for wheelchairs, not simply more space. Section 376-65G. addresses the maximum number of accessory apartments that are allowed for a three-family dwelling. Up to three accessory apartments are allowed in the proposed building due to it being of a townhouse layout with a lot width of over 75 feet. Floor plans shall be provided with the site plan so that the layout of all the units may be observed and analyzed. In addition, as Section 376-65B. is about entrances for accessory apartments, a variance for accessible apartments from this Section is not needed and should be removed from the application.

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2 Section 376-65C. was recently amended by Local Law No. 4-2019 to increase the square footage allowed for accessory apartments from 1,200 SF to 1,500 SF, an increase of 25%, while still remaining less than 50% of the principal dwelling. With this generous increase in the allowed square footage, the accessory apartments proposed are still 53% larger than allowed. The size of the principal dwelling units must be included to ensure the accessory units are less than 50% of their square footage. Given the size of the proposed accessory apartments, the development is closer to a five-family dwelling than a three-family dwelling with two accessory apartments. Five-family dwellings are not a permitted use in the R-15C zoning district. The accessory units shall be reduced in size to comply with all of the Section 376-65 standards.

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 maximum development coverage is exceeded by 40% while the already generous floor area ratio is exceeded by 33%. The total side setback is deficient by approximately 30% while the rear setback is deficient by 67%. Additionally, the accessory units are 53% greater than what is allowed. The ability of the existing infrastructure to accommodate increased residential density on non-conforming lots 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 building's footprint and the size of the accessory units shall be reduced to more closely comply with the R-15C bulk standards.

4 Pre-existing, non-conforming lots are given special consideration under Section 376-131.D.(1) of the Town's Zoning Law. The bulk standards for several residential zoning districts are relaxed to accommodate the residential uses permitted by right in these zones. The subject site is 11,475 SF or 23.5% smaller than the 15,000 SF minimum lot area required for new three-family residences in the R-15C zoning district. Variances are also required for total side setback, rear setback, maximum development coverage, floor area ratio, and size of accessory apartments. Given that this site benefits from the application of Section 376-131.D.(1), the building footprint and the number of units shall be reduced.

5 The bulk table indicates variances for lot area and lot width were previously granted in 2003 at XBA 3042. These variances were never referred to our department for review. As mandated by New York State General Municipal Law, these variances are required to be sent to us for review and comment.

6 No stairways, window wells, sidewalks, or entrances are shown on the site plan. These building features are likely closer to the property line than the 10 feet shown to the building, requiring a NYS variance. These features will also increase the development coverage provided and greater variances will be needed. If the public hearing notice was issued with incorrect information, it must be issued with the correct information.

The following comments address our additional concerns about the proposal:

7 As this parcel is a nonconforming existing lot with a lot width of less than 100 feet, the conditions of Section 376-131D.(1) apply. The minimum lot area shall be updated, since 7,500 SF is required for a lot in the R-15C zoning district.

In addition, the bulk table must also be corrected to reflect the amendment to Section 376-65C. mentioned above.

8 A review must be completed by the County of Rockland Department of Health, any comment or concerns addressed, and any required permits obtained.

9 A review must be completed by the County of Rockland Sewer District #1, any comments or concerns addressed, and all required permits obtained.

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10 The Village of Kaser is the reason this proposal was referred to this department for review. The municipal boundary is along the northern border 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 county-wide 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 which is supportive of the goals and objectives of the general area.

The Village of Kaser 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 Kaser must be considered and satisfactorily addressed, as well as any additional concerns about the proposal.

11 The proposed residential building must comply with all requirements of the New York State Uniform Fire Prevention and Building Code.

12 A review must be completed by the Rockland County Office of Fire and Emergency Services, the Town of Ramapo Fire Inspector, or the Monsey Fire District to ensure that there is sufficient maneuverability on site for fire trucks, in the event an emergency arises.

13 Question #5a. on the Short Environmental Assessment Form should be changed to "No" instead of the answered "Yes". If this development was permitted under the zoning regulations, the variances and a Zoning Board of Appeals application would not be necessary.

14 The development coverage and floor area ratio calculations must be provided on the site plan so their accuracy can be verified.

15 The actual building height proposed must be indicated on the bulk table, rather than "< 35'." The bulk table shall not include estimations.

16 It will be difficult for a car parked in parking spots #3 and #6 to maneuver out of the spot without a turnaround area. A turnaround area shall be provided so that vehicles may safely back out.

17 It will not be possible for sanitation workers to access the dumpster enclosure if vehicles are parked in spaces #1 and #2. The dumpster enclosure must be moved to a more accessible location.

18 The site plan references a three-family dwelling with three accessory apartments. This shall be corrected to a three-family dwelling with two accessory apartments.

19 The parcel must be centrally located on the vicinity map so that the surrounding area is visible.

20 The site plan shall include map notes that list all appropriate information, including the district information. The applicant's engineer has been reminded of the importance of including such details.

21 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.

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22 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.

23 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 Department of Health
Rockland County Sewer District #1
Rockland County Office of Fire and Emergency Services
Monsey Fire District

Anthony R. Celentano P.E.
Village of Kaser

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.