

**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*

April 26, 2019

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:** 12/26/2018

**Date Review Received:** 3/14/2019

**Item:** *ELIEZER LOW/16 FRED ELLER DRIVE (R-1807E)*

Front setback (Fred Eller Road and Summit Avenue), front yard (Fred Eller Road and Summit Avenue) and floor area ratio variances to allow the construction of a single-family dwelling with an accessory apartment on .23 acres in an R-15A zoning district. Variances were previously granted 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 and floor area ratio.

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. In October of 2018, we reviewed a revised proposal for a detached two-family dwelling. The magnitude of the required variances increased as a result. We noted that a minimum lot area of 20,000 SF was required for a detached, two-family dwelling in the R-15A zoning district. We considered a 50 percent variance from the minimum lot area standard to be excessive. Since a larger residential structure was proposed, the extent of the floor area ratio variance increased to 62.5 percent. We recommended that these substantial, self-imposed increases in non-conformity be denied, and the original approval for a detached single-family dwelling with one accessory apartment stand. We also advised that the size of the building be reduced to that of the original proposal.

The current proposal is for a single-family dwelling with an accessory apartment, thereby reducing the extent of the lot area and lot width variances. However, the building footprint has not been reduced so a floor area ratio (FAR) variance of 62.5 percent is still required, as well as greater front setback and front yard variances on Fred

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Eller Road and Summit Avenue. Given that an accessory apartment cannot exceed 1,500 SF, we question whether a two-family dwelling is still proposed. A single-family dwelling with an accessory apartment should be smaller than a detached two-family dwelling proposed on the same parcel. The building footprint must be reduced so the original FAR variance of 20 percent is not exceeded.

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 with a larger residential building. 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 residential structure must be scaled back so that it conforms with the previously granted FAR variance.

3 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 and April 26, 2019 GML reviews 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. Permitting a more intensive use, which will result in greater non-conformity, must not be allowed.

The following comments address our additional concerns about this proposal.

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 The applicant must comply with the conditions of the Sewer District's letter of April 17, 2019.

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

7 The front yard and front setback measurement on Fred Eller Road is 23 feet. The bulk table specifies 25 feet therefore understating the extent of the variance. The Building Department's January 25, 2019 denial letter indicates that variances are required for the 23-foot front yard and front setback on Fred Eller Road. These variances are not included in the December 31, 2018 narrative. All application materials must be consistent. A revised application must be submitted to the ZBA, and referred to this department for review.

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 or increase the development coverage. Parking maneuverability shall not be affected by the location of these features.

9 The development coverage calculation must be provided on the site plan so its accuracy can be verified

10 The building footprint is 2,520 SF. The number of stories is not specified. Based on the FAR of .65, indicated on the bulk table, a 6,500 SF structure is proposed. The gross floor area must be provided, as well as an FAR calculation.

11 It appears that a fourth parking space is proposed immediately west of space 3. This again raises the question of whether a two-family dwelling is proposed. The parking area must be reconfigured so this 19'x9' area does not serve as an additional parking space.

12 It will difficult for a vehicle parked in space 3 to maneuver out of the spot 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.

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13 It is not possible to determine if the accessory apartment complies with the requirements of Section 376-65. Additional information must be provided about this unit.

14 The site plan must contain map notes that list all appropriate information, including the district details. The applicant's engineer has been reminded of this requirement, and the importance of providing these details.

15 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.

16 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.

  
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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.E.

Eliezer Low

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.*

