

DEPARTMENT OF PLANNING

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Douglas J. Schuetz
Acting Commissioner

Arlene R. Miller
Deputy Commissioner

September 8, 2020

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

Tax Data: 56.10-2-33

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

Map Date: 2/17/2020

Date Review Received: 7/31/2020

Item: *MOSHE SILBERMAN/160 HORTON DRIVE (R-2718)*

Variations for lot area, lot width, side setback, total side setback and street frontage to allow the conversion of a semi-attached, single-family dwelling to a two-family dwelling. The .2296-acre site is located in an R-15 zoning district.

North side of Horton Drive, approximately 340 feet east of College Road

Reason for Referral:

College Road (CR 81)

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 The subject site does not meet the minimum lot area standard of 15,000 SF required for a single-family residence. The applicant is proposing to convert the existing structure to a two-family residence with only 50 percent of the required lot area available. Additional non-conformities include lot width and street frontage. The semi-attached building cannot meet the side setback and total side setback standards required for a detached, two family dwelling. This section of Horton Drive is characterized by similarly-sized parcels. Granting these bulk variances will set a precedent that may result in nearby property owners seeking the same relief. A doubling of the residential density in this neighborhood of non-conforming parcels will negatively impact its community character and infrastructure capacity. Additional residents will generate more traffic on the local streets. The potential for traffic conflicts is great. While two-family residences are permitted as-of-right in the R-15 zoning district, they are subject to stricter bulk requirements. This site and existing structure are particularly deficient in meeting these more stringent standards. We recommend that the required variances be denied.

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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. As noted above, the lot area is deficient by 50 percent. A variance of over 45 percent is required for both lot width and street frontage. The ability of the existing infrastructure to accommodate increased residential density on undersized, nonconforming 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.

3 A use variance is required for this proposal. While two-family dwellings are an as-of-right use in the R-15 zoning district, the residential structure must be detached. The existing, semi-attached single-family dwelling cannot be converted to a two-family residence by right. The application materials and the Town of Ramapo Building Department's denial letter must be revised to reflect the need for a use variance.

4 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.

5 The proposed parking layout is very constrained. The turnaround area is located in the front yard and more than 100 feet south of spaces 1 and 2. Vehicles in these parking spots will have to reverse the length of the driveway before reaching the turnaround area. Spaces 3 and 4 are also in the front yard and within five feet of the building entrance. Vehicles in these spaces will have to make several turning maneuvers to exit these spots. The parking space and turnaround area configuration give rise to safety concerns for pedestrians and children at play. There is insufficient lot area to provide the required minimum on site parking spaces. A second unit must not be permitted.

The following comments address our additional concerns about this proposal.

6 A review must be completed by the of Rockland County Highway Department, and all concerns addressed and required permits obtained.

7 The residential structure must comply with all requirements of the New York State Uniform Fire Prevention and Building Code.

8 A review must be completed by the Rockland County Health Department to ensure compliance with Article XIX (Mosquito Control) of the Rockland County Sanitary Code.

9 A review must be completed by the County of Rockland Sewer District No. 1, any comments or concerns addressed, and all required permits obtained.

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

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

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12 The subject site must be centered on the vicinity map.

13 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.

14 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 Highways
Rockland County Department of Health
Rockland County Sewer District #1
New York State Department of State

Anthony R. Celentano P.L.S.

Moshe Silberman

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.