



Rockland County

Ed Day, Rockland County Executive

DEPARTMENT OF PLANNING

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Douglas J. Schuetz
Acting Commissioner

Arlene R. Miller
Deputy Commissioner

November 1, 2018

Spring Valley Zoning Board of Appeals
200 N. Main Street
Spring Valley, NY 10977

Tax Data: 57.21-1-16

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

Map Date: 8/2/2018

Date Review Received: 9/11/2018

Item: 111 WEST AVENUE & 8 PAIKEN DRIVE (SV-937)

A variance application to allow the construction of two single-family dwellings on 0.18 acres in the R-2 zoning district. A variance for parking in the front yard is requested. Variances have been granted for lot area, lot width, front yard, side yard, total side yard, and two principal buildings on one lot.

A through-lot on the eastern side of Paiken Drive and the western side of West Street, approximately 120 feet north of Maple Avenue.

Reason for Referral:

Town of Ramapo

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 According to the site plan, variances have already been granted for lot area, lot width, front yard, side yard, total side yard, and to allow two principal buildings on one lot. This department has no record of receiving a request to review these variances, as is required under General Municipal Law. This current application for parking in the front yard must be disapproved. A new application for all required variances must be resubmitted and forwarded to this department for review.

The following comments address our additional concerns about this proposal.

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2 Overall, this proposal represents a general overdevelopment of the property. The subject site does not meet the minimum lot area standard of 8,500 square feet required for a single-family residence, and provides less than four-fifths of the lot area required for a detached two-family dwelling. The lot itself is non-conforming for width, as well. The proposal requires substantial yard variances to accommodate an additional residential building on an undersized parcel. The surrounding neighborhood is characterized by similarly-sized parcels. In addition to the granting of the necessary bulk variances, a variance to allow two principal buildings on one lot is an uncommon decision, and 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 capacities. Additional residents will generate more traffic on the local streets, leading to congestion and traffic conflicts. While detached two-family residences are permitted as of right in the R-2 zoning district, they are subject to stricter bulk requirements. This site is particularly deficient in meeting these more stringent standards. Moreover, the decision to allow two principal structures on a residential lot is unusual and represents a substantial deviation from standard planning and zoning practices. We recommend that only one single-family residence be permitted.

3 Section 255-20C of the Village zoning regulations states that "there shall not be more than one building on a lot except as permitted elsewhere in this chapter." While the Zoning Board of Appeals is empowered to grant variances of any part of the zoning regulations, it is unclear whether or not this can be accomplished by an area variance. Section 255-20 is titled "General Requirements". The restriction on the number of principal structures is not included in the Table of General Bulk Requirements. As such, allowing more than one principal structure cannot be accomplished by varying the bulk requirements of the R-2 zoning district. The Village must determine whether the proposed second structure can be allowed by an area variance or a use variance.

A use variance is subject to significantly stricter criteria than a bulk variance. 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.

Allowing two principal structures on one lot is an unusual and a significant variation from standard practices. As such, it may be subject to the higher level of scrutiny that is associated with a use variance application. The Village must obtain a legal opinion regarding the proper type of variance for this proposal.

4 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 proposed lot area and lot width are 80% and 40% of the required minimums for a detached two-family dwelling, respectively. The front yard is deficient by 20%, and the side and total side yards are deficient by 33%. The ability of the existing infrastructure to accommodate increased residential density on undersized 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 Village must consider the cumulative and regional impacts of permitting such development. As indicated above, only one single-family dwelling can be constructed to maintain the integrity of the zoning ordinance.

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5 The Town of Ramapo is the reason this proposal was referred to this department for review. The municipal boundary is approximately 210 feet to the west of the parcel. 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 Town of Ramapo 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 Town of Ramapo must be considered and satisfactorily addressed, as well as any additional concerns about the proposal.

6 This proposal is presumed to be for two single-family dwellings. This assumption is based on the four parking spaces indicated on the site plan, which is consistent with the requirements of two single-family dwellings. However, the site plan and application review form provided do not explicitly state the total number of dwelling units. The description in the application review form is "two family dwelling." The bulk table has the heading "Two-family detached dwelling" and the site plan only labels the structures as "frame dwelling". It is unclear whether a total of two units are proposed, or if each structure is to be a two-family dwelling. The applicant must clarify their intentions, and the application review form and site plan must be amended to explicitly state the number of units in each structure and be consistent throughout all submitted materials.

7 Section 255.22.C of the village zoning regulations exempts open porches and decks from yard and coverage requirements. Section 255.22.D of the village zoning regulations allows architectural features to project up to three feet into required yards. The village must confirm that the proposed decks, porches, and overhangs comply with the requirements of these sections.

8 Recently the Rockland County Planning Department has been raising an issue regarding a significant discrepancy of the floor area ratio (FAR) provided on the site plan. The attorney for the Village's ZBA wrote to the County explaining that the FAR does not include the basement if it is 7.5' or less in height. While we are cognizant of the definition for FAR regarding the basement height for the Village, we still have questions regarding the calculation provided on the plans. To date, we have still not received any plans that provide the needed information to make an informed decision regarding the FAR calculation. Given the information provided, we believe that this application has a noteworthy discrepancy with the FAR that must be addressed.

The site plan indicates that the proposed structure will have two and one-half stories and a FAR of 0.65. However, the site plan shows a total building footprint of approximately 2,600 square feet. Assuming each story will have a gross floor area equal to the footprint, two 2-story structures will have an overall gross floor area of approximately 5,200 square feet. This would result in a FAR of 0.65, which is the maximum FAR allowed. Assuming the half-story on each structure will have 50% of the gross floor area of a full story, the FAR of the two structures will be 0.81. Although this is an estimate, a FAR of 0.81 is 25% greater than the allowed maximum FAR of 0.65. The magnitude of this discrepancy requires further attention. The applicant must positively demonstrate that the proposed structure will conform to the Village's FAR requirement; a FAR calculation must be provided on the site plan. This calculation must include a floor by floor tally of gross floor area and, if applicable, a statement that the basement is exempt from FAR requirements due to its height. If the FAR exceeds the allowable 0.65, the variance application must be amended and the public hearing notice must be reissued. Any application that is revised due to an increase in FAR must be sent to this department for review.

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9 The applicant must comply with all comments made by the Rockland County Sewer District No. 1 in their letter of September 24, 2018.

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

11 The site plan shall contain map notes, including district information.

12 The application form indicates the property receives water service from United Water. The form must be corrected to Suez.

13 The site plan indicates the location of parking spaces, but does not include driveways or curb cuts. There are also several encroachments into the parking spaces, including Belgian block curbs, an electric meter, a gas meter, and a concrete walkway. Parking spaces must be free of all obstructions. The gas meter, in particular, represents a substantial encroachment as it must also have protective bollards to prevent accidental contact with vehicles. Lastly, there is no turnaround area, other than the other parking space, to allow vehicles to not back out into the street. The parking spaces must be amended to be free of all encroachments, have a dedicated turnaround area, and include accessways and curb cuts.

14 The NYS Department of State has determined that the Village 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 Village's administration and enforcement of the State Uniform Fire Prevention and Building Code initially raised in the Executive Deputy Secretary of State's letter of July 15, 2016, and subsequently again in December 18, 2017, the proposed residential building must be held to the requisite minimum standards and comply with all requirements of this code.

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.



Douglas J. Schuetz
Acting Commissioner of Planning

cc: Mayor Alan Simon, Spring Valley
Rockland County Department of Health
Rockland County Sewer District #1
New York State Department of State

Anthony R. Celentano P.L.S.
Town of Ramapo Planning Board

Rockland County Planning Board Members

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**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.

