

DEPARTMENT OF PLANNING

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Acting Commissioner

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October 29, 2018

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

Tax Data: 57.54-1-22

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

Map Date: 6/13/2018

Date Review Received: 8/21/2018

Item: 16 WEST FUNSTON AVENUE (SV-876A)

A variance application to allow a two-lot subdivision of 0.42 acres in the R-2 zoning district, and the construction of a new 2-family dwelling. An existing 3-family dwelling is to remain on lot 1. Variances are requested for lot area, lot width, front yard, side yard, total side yard and parking in the front yard for lot 2; and lot width, rear yard and parking in the front yard for lot 1.

A through-lot on the southern side of West Funston Avenue and the northern side of Hillman Place, approximately 100 feet east of South Madison Avenue.

Reason for Referral:

South Main Street (NYS Route 45)

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 proposed new lot does not meet the minimum lot area standard of 8,500 square feet required for a single-family residence, and provides less than three-quarters of the lot area required for a two-family dwelling. The proposed two-family residence will require substantial yard variances to accommodate an oversized residential building on an undersized parcel. Granting these bulk variances will set a precedent that may result in nearby property owners seeking the same relief. A substantial increase 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 and the State highway, leading to congestion and traffic conflicts. While two-family residences are permitted as of right in the R-2 zoning district, they are subject to stricter bulk requirements. The proposed new lot is particularly deficient in meeting these more stringent standards. This lot, with a total lot area of 18,214 square feet can legally be subdivided for only a single-family dwelling use on each lot. We recommend that the variances be denied for the two-lot subdivision and a total of five dwelling units.

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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. The proposed new lot area is 73% of the required minimum for a two-family use. The lot width is 80% of the minimum. 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.

The following comments address our additional concerns about this proposal.

3 The existing structure that will remain on lot 1 is a non-conforming three-family dwelling. The bulk requirements shown on the site plan are those of a two-family dwelling. The village must determine what the appropriate bulk requirements are for this use. In order to mitigate the impacts of a non-conforming use, the village must consider requiring the elimination of one dwelling unit in the existing structure as a condition of approval. In addition, the proposed new property line will result in the creation of a new non-conformity, specifically, the detached garage will become non-conforming for the rear setback. The village must also consider requiring the removal of the garage as a condition of approval. This would prevent the creation of a new non-conformity, and also have the additional benefit of allowing an adjustment to the proposed new property line. Lot 1 could be reduced to 10,000 square feet, which is conforming for a two-family use, and lot 2 could be increased in size, creating a lot that would almost conform to the single-family minimum lot size.

4 A review shall be completed by the New York State Department of Transportation and any required permits obtained.

5 The applicant must comply with all comments made by the Rockland County Department of Health in their letter of February 1, 2018.

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

7 The map notes on the site plan shall contain district information. The vicinity map must include a north arrow and scale, and the subject property must be centered within the map in order to provide information about the surrounding neighborhood. Updated metes and bounds for the new property line must be provided.

8 The use of tandem parking spaces prevents egress for vehicles parked behind other vehicles and creates an inconvenient situation for residents. This layout will encourage residents to park vehicles off-site instead of in their designated spaces and negates the purpose of on-site parking requirements. The tandem parking spaces must be reconfigured to allow independent access for all parking spaces.

9 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 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.

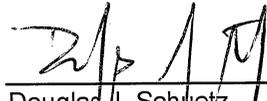
10 All sidewalks, stairs, and decks, must be shown on the map to ensure that there is sufficient access to the building for firefighting purposes and there are no impacts to yard requirements. In addition, since no specific building height has been provided, it cannot be determined if the building is greater than 30 feet to the eaves. This information must be provided.

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11 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.

12 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.

13 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
New York State Department of State
New York State Department of Transportation
Rockland County Department of Health
Rockland County Sewer District #1

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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.

