Rockland County

Ed Day, Rockland County Executive

DEPARTMENT OF PLANNING
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Douglas J. Schuetz
Acting Commissioner

Arlene R. Miller
Deputy Commissioner

August 21, 2018

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

Tax Data: 57.39-2-10

Re: GENERAL MUNICIPAL LAW REVIEW: Section 239 L and M
Map Date: 6/3/2018 **Date Review Received:** 7/3/2018

Item: ***36 N. MAIN STREET (SV-871B)***

Variances to permit a mixed-use building, located in the GB zoning district on .08 acres. A commercial building, comprised of two store units on the first floor, and eight residential units on the other floors is proposed. Multiple variances are required in order to construct the proposed building, and include: lot area, street frontage, front yard, side yard, rear yard, building height, number of stories, floor area ratio, and number of parking spaces.

Northeast corner of Church Street and NYS Route 45 (Main Street)

Reason for Referral:

NYS Route 45 (Main Street)

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 property is located within the Downtown Urban Renewal Area Overlay Zone, which allows for additional uses and less restrictive bulk requirements than what is normally permitted within the GB zoning district. This proposal is based on those less restrictive bulk requirements. However, the overlay district is explicitly meant to apply only to lots with a minimum size of 20,000 square feet. Section A-10.F(3) says "Existing properties that do not meet the minimum lot requirements of the Downtown Urban Renewal Area overlay district are subject to existing GB zoning requirements." With only 3,428 square feet, the lot area of this property is only 17% of the overlay district standard. As a result of the inadequate size of the lot, the less restrictive bulk requirements of the overlay district create a significant overuse of the site. The GB zoning district allows a residential density of 18 units per acre. The proposed structure has a residential density of 102 units per acre, which is 465% greater than the GB zoning district standard. The application of the overlay district bulk standards to a lot that is deficient in area by 83% is not appropriate and results in an unacceptable gross overdevelopment of the site. The proposed development must be done using only the GB zoning district requirements, and must be scaled back to only consist of a retail use.

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2 The site plan provides two bulk tables for the two separate proposed uses. The retail use is permitted by right; the multi-family or mixed-use development by special permit of the Village Board. However, as indicated above, this parcel is located within the Downtown Urban Renewal Area Overlay Zone, and therefore, conformance must be with the regulations of Section A-10F. If the 20,000 sq. ft. lot is unattainable, then as indicated in Section A-10F.(3), "Existing properties that do not meet the minimum lot requirements of the Downtown Urban Renewal Area overlay district are subject to existing GB zoning requirements." Since the parcel is extremely deficient in meeting the 20,000 sq. ft. lot area minimum, then a mixed-use could be proposed, according to the criteria in Section 255-28K (which also requires a lot area of 20,000 sq. ft.). In order to grant the special permit mixed use, twelve criteria are provided. The applicant has NOT demonstrated ANY of these criteria. The proposed mixed-use development must be disapproved. ONLY a permitted use or a special permit use that complies with all of the bulk requirements can be proposed for this site.

3 The site plan provided indicates that NO parking spaces will be provided. The residential component of the building requires 16 parking spaces while the parking requirement of the ground floor retail use is listed to be 13 spaces. In total, 29 parking spaces are required, and none are proposed on site. No information is provided regarding where the residents or patrons will park; no off-site parking arrangements have been provided. This property is located along a State highway that is a heavily trafficked commercial corridor. Inadequate on-site parking will result in additional traffic congestion and force residents to park throughout the surrounding community and along Route 45, which has been a concern previously expressed by the Village. Adequate on-site parking must be provided, or as a minimum, information regarding where the residents and patrons will park off-site must be given. Any off-site parking arrangement must be in writing, and agreed upon by the property owner in which vehicles are proposed to park.

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 is deficient by 83%. The lot widths along Main Street and East Church Street are only 46% and 33% of the required minimum, respectively. The proposed FAR is 42% greater than the generous 2.0 maximum FAR limit in the Downtown Urban Renewal Area Overlay Zone (DURAOZ). However, since the lot area does not meet the 20,000 minimum for the DURAOZ, the FAR is limited to only .5 for retail use, and .6 for multi-family use; both of which are exceed the maximum by 90% and 373% respectively. 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 proposal must be scaled back in square footage and the number of units reduced to more closely conform to the Village regulations.

5 As noted above, two bulk tables are provided, with different standards based on the proposed use. This is not the appropriate way to provide bulk requirements for this parcel. Since a mixed-use development is permitted, the bulk requirements for that use must be used to determine compliance. In addition, the FAR provided is broken into components; also not an acceptable way to calculate the measurement. The FAR must be taken on the entire square footage of the building; not piecing together individual uses. An updated bulk table must be provided that accurately reflects the proposed uses in one table, and calculations provided for the entire project.

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6 A portion of the northeastern corner of the property lies within the FEMA AE floodplain. The floodplain limit must be indicated on the site plan. In addition, a lot area adjustment calculation must be provided as required by Section 255.18.A of the village zoning regulations and the bulk table updated. Application of the floodplain calculation will further exacerbate the lot area deficiency and increase the percent of FAR non-conformity; all factors supporting that the proposed construction is grossly over-sized and must be significantly scaled back. In addition, given the magnitude of the variances needed to implement the site plan, some of these variances will be underrepresented with the floodplain deduction. Any new variances needed, due to factoring in the lot area deduction, will have to be noted in the public hearing notice, which will have to be re-issued, and a new referral sent to us under the requirement of the State General Municipal Law.

For the reasons given above, this application must be denied. The following comments address our additional concerns about this proposal.

7 The engineer of record shall certify to the floodplain administrator for the Village of Spring Valley that the proposed construction is in compliance with the floodplain regulations of the Village and the Federal Emergency Management Agency.

8 The Map Notes provided contain numerous errors and must be corrected. Map note #1 lists an incorrect parcel identification and must be corrected to indicate the parcel is 57.39-2-10. The applicant information must be provided in note #2. Section 239K of the General Municipal Law no longer exists. Map note #6 must be corrected to 239M. Map note #8 states that the property is not located within the Floodplain Overlay District. As noted above, the northeast corner of the site is within the AE flood zone. This note must be corrected. In addition to the notes provided, the map notes must include district information. Lastly, the vicinity map is highlighting the incorrect parcel. The vicinity map must indicate the correct parcel.

9 The proposed building extends into and largely blocks what is currently an open sidewalk along the western portion of the site. This will hinder the mobility of pedestrians and have a detrimental effect on the development of a vibrant, active downtown neighborhood. The building must be scaled back to allow for safe, useable pedestrian access. This will reduce the extent of the yard variances required as well.

10 The block wall features shown on the site plan will impede and create a hazard for pedestrians. A safe walkway must be provided. Any work performed within the State right-of-way will require approval from the New York State Department of Transportation. Removal of these features will also help the building to better comply with the yard requirements.

11 A review shall be completed by the New York State Department of Transportation and any required permits obtained. The structure is proposed to extend completely to the property line and may cause issues with vehicle sight-lines. The Department of Transportation must consider the design of the building and its impact on traffic safety in their review.

12 The applicant must comply with all comments made by the Rockland County Health Department in their letter of July 12, 2018.

13 The comments in the July 27, 2018 letter from the Rockland County Sewer District No. 1 must be addressed.

14 All signs shall be shown on the site plan and comply with the Village's sign ordinance.

15 The notation on the building indicates that a "5 story building" is proposed, yet the remaining notation states the first floor is retail, and the second, third, and fourth floors apartments. The description on the Referral Form also indicates that the building is a 4 story building. All information must be consistent. The incorrect building height must be fixed.

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16 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.

17 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.

18 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.

19 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 Transportation
New York State Department of State
Rockland County Department of Health
Rockland County Sewer District #1
Rockland County Drainage Agency

Anthony R. Celentano P.L.S.

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.

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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.