

DEPARTMENT OF PLANNING

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Acting Commissioner

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February 4, 2019

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

Tax Data: 57.21-1-14

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

Map Date: 1/29/2018

Date Review Received: 12/20/2018

Item: 115 WEST STREET (SV-949)

A variance application to allow the construction of two single-family dwellings on a through-lot with 0.23 acres in the R-2 zoning district. A variance is requested to allow two principal structures on one lot, as well as bulk variances for lot area, lot width, front yards (Paiken Drive and West Street), side yard, total side yard, minimum distance of five feet for open porches and decks that are exempt from yard requirements as per Section 255.22C, and required spacing between principal structures.

A through-lot on the eastern side of Paiken Drive and the western side of West Street (a.k.a. Harriet Tubman Way), approximately 200 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 It is the opinion of this department that a variance of section 255-20C of the Village zoning regulations, which states that "there shall not be more than one building on a lot except as permitted elsewhere in this chapter," represents a use variance. Section 255-20 is titled "General Requirements". A subsequent subsection (255-22) is entitled "Supplementary Bulk Requirements," implying that section 255-20C is not a bulk requirement. 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.

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:

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- 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 variance of section 255-20C shall not be granted.

2 A significant difficulty that arises with the granting of use variances is the establishment and application of bulk requirements. Since Village bulk requirements are use-specific, there are no clear criteria to follow. However, using the bulk requirements of the most similar use, a detached two-family dwelling, as a baseline, the County offers the following comment:

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 width is 50% of the required minimum for a detached two-family dwelling. The front yards are 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. This property must be developed in a manner that maintains the integrity of the zoning ordinance.

3 The application narrative indicates that two single-family dwellings are proposed. The bulk table heading and GML referral form indicate that a two-family dwelling is proposed. A new GML application must be submitted that clearly identifies the proposal for the site. The correct descriptions and associated information without discrepancies must be provided so that a thorough evaluation of the true proposal can be undertaken.

The following comments address our additional concerns about this proposal.

4 The Town of Ramapo is the reason this proposal was referred to this department for review. The municipal boundary is approximately 210 feet 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.

5 The application narrative does not indicate that variances for the two front yards are required. The narrative must be corrected. In addition, the bulk table must be amended to indicate that variances are required for the front yard of both West Street and Paiken Drive.

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6 The applicant must comply with all comments made by the Rockland County Department of Health in their letter of December 31, 2018.

7 A review must be completed by the County of Rockland Sewer District No. 1 and all required permits obtained from them.

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 ratio 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 structures will have three stories and a FAR of 0.65. However, the site plan shows a combined building footprint of approximately 3,900 square feet. Assuming each story will have a gross floor area equal to the footprint, the proposed structures will have an overall gross floor area of approximately 11,700 square feet. This would result in a FAR of 1.17. Although this is an estimate, a FAR of 1.17 is 80% 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.

9 Section 255.22.C of the village zoning regulations exempts open porches and decks from yard and coverage requirements. The village must confirm that the proposed decks and steps comply with this section and do not include any enclosed spaces.

10 The use of tandem parking spaces prevents egress for vehicles blocked by 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.

11 Paiken Drive is misspelled on the site plan and must be corrected.

12 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.

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.

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

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

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.