



# Rockland County

Ed Day, Rockland County Executive

## DEPARTMENT OF PLANNING

Dr. Robert L. Yeager Health Center

50 Sanatorium Road, Building T

Pomona, New York 10970

Phone: (845) 364-3434 Fax: (845) 364-3435

**Douglas J. Schuetz**

*Acting Commissioner*

**Arlene R. Miller**

*Deputy Commissioner*

October 23, 2019

Spring Valley Zoning Board of Appeals

200 N. Main Street

Spring Valley, NY 10977

**Tax Data:** 57.46-1-31

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

**Map Date:** 6/21/2019

**Date Review Received:** 9/24/2019

**Item:** 15 CHESTNUT STREET (SV-975A)

Variances to permit the construction of an 8-unit multifamily dwelling with offices on the first floor. The site is located on 0.355 acres in the PO zoning district. The variances required include lot area, lot width (Chestnut Street and Walnut Place), front yard (Chestnut Street and Walnut Place), side yard, rear yard, floor area ratio, number of parking spaces, density of a multi-family dwelling, and visibility at an intersection. A special permit use is required from the Village Board for the mixed-use proposal.

Southwest corner of Chestnut Street and Walnut Place

### Reason for Referral:

NYS Route 59

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 Our office previously reviewed an application for this site in which a 12-unit dwelling was proposed. While the number of units has been scaled back to eight, office space is now being proposed for the first floor. As this application is now for a mixed-use development, a special permit is now required. In addition, the additional use of office space requires more parking spaces than a multi-family dwelling does on its own, and exacerbates the degree of non-conformity. The Village must consider the cumulative and regional impacts of permitting a mixed-use development that does not conform to the Village standards.

Mixed-use developments are permitted in the PO zoning district by special permit only. Special permit uses are, by definition, subject to a higher standard of review than as-of-right uses. In addition to complying with the bulk requirements of the zone in which they are proposed, they must meet the general and individual special permit standards outlined in Article VII, Section 255-28K, of the Spring Valley Zoning Code. The gross lot area of the subject site is less than the minimum lot area requirement of special permit uses for a mixed-use development in the PO zoning district. The eight-unit dwelling and office space will result in the overutilization of this site as evidenced by the number and the magnitude of the variances required. The proposed mixed-use development

## **15 CHESTNUT STREET (SV-975A)**

must be scaled back to more closely conform to the bulk standards, and the number of units reduced.

2 In addition to the necessary special permit, this proposal will require substantial variances from the GB zoning district bulk requirements. The Village zoning regulations authorize the Zoning Board of Appeals to "vary or modify the strict letter of this chapter, where its literal interpretation would cause practical difficulties or unnecessary hardships..." The subject property is a regularly-shaped parcel with sufficient lot area for office use, which is allowed by right in the PO zoning district. There are no unusual conditions or hardships associated with this property for which a variance would be necessary to grant relief. The application, therefore, does not represent a request for relief from a hardship, but rather is a request to overdevelop the property. Bulk requirements, such as minimum yard size and limits on the number of residential units per acre, serve an important and necessary function, and should not be dismissed without cause or the identification of a legitimate hardship. We recommend that this application be disapproved, and that the property be developed with a permitted land use and within the requirements of the village zoning regulations.

3 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 77% of the required minimum. The lot widths for both frontages are 83% of the minimum. The Walnut Place and Chestnut Street front yards are deficient by 67% and 55%, respectively. The side and rear yards are deficient by 46% and 4%, respectively. The floor rear ratio exceeds the maximum standard by 12%. The number of units per acre exceeds the maximum standard by 133%. Only 56% of the required number of parking spaces is provided. 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. Village officials have previously expressed concern to this department about the increasing traffic congestion along the NYS Route 45 and 59 corridors and the impact on emergency services' response time. In direct contradiction to these concerns, the Village's Zoning Board of Appeals overrides our GML recommendations by granting variances to allow increased residential density and oversized office space on undersized lots such as the subject site. Land use and traffic generation are not mutually exclusive concepts. If more intense uses are permitted, additional traffic will be generated causing increased congestion on the roadway network, and further hampering the response time of emergency vehicles. The Village must consider the cumulative and regional impacts of permitting such development. As indicated above, this application must be denied and the property developed in a manner that is consistent with the Village's requirements.

4 The bulk table and application materials do not include the requirement for number of units per acre. Section A-10.E(2) of the Village's regulations limit the number of units per acre to 18. As this parcel is 0.355 acres, only six units are permitted. All application materials must be amended to include this requirement and indicate that a variance is required, and the public hearing notice must be reissued with this information. In addition, the granting of such variance will allow a greater density on the site than what is allowed. This could then set a precedent for other parcels to request similar uses, thereby changing the character of the neighborhood. Granting variances which would change the allowed density is equivalent to a zone change; it is our policy to disapprove zone change requests such as this without a comprehensive background study. The development must be scaled back by two units to comply with the Village standards.

5 The proposed structure does not comply with Section 255-22.H of the village zoning regulations, which prohibits impediments to visibility at intersections. This is an unacceptable hazard to motorists and pedestrians. The building must be reduced in size and reconfigured to comply with this section of the regulations.

The following comments address our additional concerns about this proposal:

6 An updated review must be completed by the Rockland County Department of Health. In addition, the applicant must comply with the comments made in their letter of July 17, 2019.

**15 CHESTNUT STREET (SV-975A)**

7 The applicant must comply with the comments made by the Rockland County Sewer District No. 1 in their letter of October 9, 2019.

8 A review must be completed by the New York State Department of Transportation, any comments or concerns addressed, and any required permits obtained.

9 A review must be completed by the Rockland County Office of Fire and Emergency Services, the Village of Spring Valley Fire Inspector, or the Spring Valley Fire Department to ensure that there is sufficient maneuverability on site for fire trucks, in the event an emergency arises.

10 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. In addition, section A-10.E(5) of the Village's zoning regulations prohibits placing living quarters below grade in multifamily dwellings, which would prevent any living space from qualifying for the basement ceiling height exemption. 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 three stories and an FAR of 0.67. However, the site plan shows a building footprint of approximately 5,690 square feet. Assuming each story will have a gross floor area equal to the footprint, the proposed structure will have an overall gross floor area of approximately 17,070 square feet. This would result in an FAR of 1.10. Although this is an estimate, an FAR of 1.10 is 64% greater than the proposed FAR of 0.67. The magnitude of this discrepancy requires further attention. The applicant must positively demonstrate that the proposed structure will conform stated FAR; an FAR calculation must be provided on the site plan. This calculation must include a floor by floor tally of gross floor area. If the FAR exceeds the proposed 0.67, an additional variance must be obtained 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.

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

12 The Applicant Review Form and project narrative indicate a variance for total side yard is required, but omit the need for a side yard variance. These materials shall be corrected to indicate that the required variance is for side yard. If the public hearing notice was issued with the incorrect information, it must be reissued with the correct variance being sought.

13 It will be difficult for a vehicle parked in space #13 to safely maneuver out of the parking spot. A turnaround area must be provided. In addition, if all the parking spaces are occupied, it will be difficult for a vehicle to turn around and exit the site to look for a spot elsewhere.

14 It cannot be assumed that the "many more parking options in this area" will be sufficient enough to meet the needs of this proposed development, as the project narrative states. Offsite parking arrangements must be made and written documentation provided, and the locations shown on a map.

15 The site plan must be amended to include a trash enclosure that complies with yard requirements, is accessible for pick up, and does not impede the maneuverability of vehicles on site.

16 Areas designated for snow removal must be clearly delineated on the site plan so that the plow drivers will know where to place the snow piles. Providing specific locations on the site for the snow piles will reduce the loss of available parking spaces meant to be used by residents and tenants of the office space. This is especially critical since the on-site parking requirement is not achieved.

**15 CHESTNUT STREET (SV-975A)**

- 17 The map notes shall contain district information. The applicant's engineer has been reminded of the importance of providing these details.
- 18 The site plan must be amended to indicate all utilities.
- 19 Map note #6 must be corrected to Section 239L & M, as Section 239K of the General Municipal Law no longer exists.
- 20 The site plan must label the existing driveway on the Walnut Place frontage as to be removed and a new sidewalk section to be added.
- 21 The proposed residential building must comply with all requirements of the New York State Uniform Fire Prevention and Building Code. All sidewalks, stairs, decks, and window wells must be shown on the site plan to ensure that there is sufficient access to the building for firefighting purposes.
- 22 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.
- 23 Mixed-use developments are permitted by Special Permit of the Village Board. We request the opportunity to review the Special Permit application and any variances that may be needed to implement the proposed site plan, as required by New York State General Municipal Law, Section 239-m (3)(a)(v).
- 24 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.
- 25 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.
- 26 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 Office of Fire and Emergency Services

**15 CHESTNUT STREET (SV-975A)**

Rockland County Sewer District #1  
Spring Valley Fire District

Anthony R. Celentano P.E.

Builders Expediting

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.*

