

DEPARTMENT OF PLANNING

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Acting Commissioner

Arlene R. Miller
Deputy Commissioner

August 7, 2019

Spring Valley Planning Board
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: 7/11/2019

Item: 15 CHESTNUT STREET (SV-975)

A site plan application to construct a 12-unit multifamily dwelling on a corner lot with 0.36 acres in the PO zoning district. Variances are requested for lot area, lot width (Walnut Place and Chestnut Street), front yards (Walnut Place and Chestnut Street), side yard, rear yard, floor area ratio, and number of parking spaces.

The southwestern corner of Walnut Place and Chestnut Street

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 Multifamily dwellings are not allowed by right or by special permit in the PO zoning district. The narrative provided notes that mixed-use developments are permitted. However, a multifamily dwelling, with no other proposed uses, cannot be considered a mixed-use. The Village's regulations do not provide a specific definition of a mixed-use, but the standard definition of "mixed" requires that more than one use be proposed. Therefore, this proposal will require a use variance.

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:

- 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.

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- 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. A use variance shall not be granted and this application must be disapproved.

2 In addition to the necessary use variance, 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 is 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 181%. Only 71% 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 Route 45 corridor and its 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 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 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.

- 5 The applicant must comply with all comments made by the Rockland County Department of Health in their letter of July 17, 2019.
- 6 A review must be completed by the County of Rockland Sewer District No. 1 and all required permits obtained from them.
- 7 A review shall be completed by the New York State Department of Transportation and any required permits obtained.

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8 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.

9 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.

10 Prior to the start of construction or grading, a soil and erosion control plan shall be developed and in place for the entire site that meets the latest edition of the New York State Standards for Urban Erosion and Sediment Control.

11 There shall be no net increase in the peak rate of discharge from the site at all design points.

12 Water is a scarce resource in Rockland County; thus proper planning and phasing of this project are critical to supplying the current and future residents of the Villages, Towns, and County with an adequate supply of water. A letter from the public water supplier, stamped and signed by a NYS licensed professional engineer, shall be issued to the municipality, certifying that there will be a sufficient water supply during peak demand periods and in a drought situation.

13 If any public water supply improvements are required, engineering plans and specifications for these improvements shall be reviewed by the Rockland County Department of Health prior to construction. In order to complete an application for approval of plans for public water supply improvements, the water supplier must supply an engineer's report pursuant to the "Recommended Standards for Water Works, 2003 Edition," that certifies their ability to serve the proposed project while meeting the criteria contained within the Recommended Standards for Water Works. These standards are adopted in their entirety in 10 NYCRR, Subpart 5-1, the New York State regulations governing public water systems. Further, both the application and supporting engineer's report must be signed and stamped by a NYS licensed professional engineer and shall be accompanied by a completed NYS Department of Health Form 348, which must be signed by the public water supplier.

14 Public sewer mains requiring extensions within a right-of-way or an easement shall be reviewed and approved by the Rockland County Department of Health prior to construction.

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15 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.

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

17 The map notes shall contain district information. The engineer has been reminded of the importance of providing these details.

18 The bulk table does not include the requirements 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. The ratio for the proposed structure is 50.6. The bulk table must be amended to include this requirement and indicate that a variance is required.

19 A lighting plan shall be provided that shows fields of illumination. This plan must demonstrate that the intensity of the candle lumens is less than 0.1 at the property line.

20 A landscaping plan must be provided that includes low evergreen shrubs along the southern and western ends of the parking area to shield the headlights of vehicles from shining into neighboring properties.

21 A turnaround area must be provided for parking space 13.

22 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.

23 Section 239K of the General Municipal Law no longer exists. Map note #6 must be corrected to Section 239L & M.

24 The site plan must be amended to indicate all utilities.

25 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.

26 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.

27 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.

28 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).

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29 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.

30 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 Office of Fire and Emergency Services
Rockland County Sewer District #1
New York State Department of Transportation
New York State Department of State
Spring Valley Fire District

Anthony R. Celentano P.E.

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.

