



Rockland County

Ed Day, Rockland County Executive

DEPARTMENT OF PLANNING

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Douglas J. Schuetz
Acting Commissioner

Arlene R. Miller
Deputy Commissioner

April 10, 2019

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

Tax Data: 57.53-1-37

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

Map Date: 1/21/2019

Date Review Received: 3/8/2019

Item: 31 SOUTH COLE AVENUE (SV-954)

A variance application to allow the construction of a two-family dwelling on a through-lot with 0.23 acres in the R-2 zoning district. Variances are requested for lot area, lot width, front yard (South Cole Avenue), side yard, and total side yard.

The western side of South Cole Avenue, approximately 180 feet south of NYS Route 59, and the eastern side of Wolfe Drive, approximately 300 feet east of Summit Avenue.

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:

****Recommend the following modifications***

- 1 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 lot is undersized and the lot width is deficient by 10%. The South Cole Avenue front yard is deficient by 12%. 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 building must be reduced in size to eliminate the need for front, side, and total side yard variances.
- 2 The surrounding neighborhood is characterized by similarly-sized parcels. Granting these bulk variances will set a precedent that may result in nearby property owners seeking the same relief. Such an increase in density would alter and negatively impact the community character in this neighborhood. The proposal shall be scaled back to more closely conform to the R-2 bulk standards.

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- 3 A review must be completed by the Rockland County Department of Health to ensure compliance with Article XIX (Mosquito Control) of the Rockland County Sanitary Code.
 - 4 The applicant must comply with all comments made by the Rockland County Sewer District No. 1 in their letter of March 14, 2019.
 - 5 A review shall be completed by the New York State Department of Transportation and any required permits obtained.
 - 6 The site plan shall contain map notes, including district information. In addition, the parcel must be centered within the vicinity map.
 - 7 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 rear decks comply with this section and do not include any enclosed spaces.
 - 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 structure will have three stories and a FAR of 0.65. However, the site plan shows a building footprint of approximately 3,208 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 9,624 square feet. This would result in a FAR of 0.97. Although this is an estimate, a FAR of 0.97 is 49% 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 The proposed residential building must comply with all requirements of the New York State Uniform Fire Prevention and Building Code. All sidewalks, stairs, entries, and window wells must be shown on the site plan to ensure that there is sufficient access to the building for firefighting purposes.
 - 10 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.
 - 11 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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12 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

Anthony R. Celentano P.E.

**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.

