Rockland County

Ed Day, Rockland County Executive

DEPARTMENT OF PLANNING
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Douglas J. Schuetz
Acting Commissioner

Arlene R. Miller
Deputy Commissioner

January 9, 2019

Spring Valley Planning Board
200 N. Main Street
Spring Valley, NY 10977

Tax Data: 57.24-1-56

Re: GENERAL MUNICIPAL LAW REVIEW: Section 239 L and M
Map Date: 7/5/2018 **Date Review Received:** 11/8/2018

Item: ***AUGUSTIN - 19 CRISPUS ATTUCKS STREET (SV-588D)***

A site plan application to allow the conversion of a three-family dwelling to a five-family dwelling on a corner lot with 0.17 acres in the RSH zoning district and PRD overlay district. No addition or expansion of the building is proposed.
The northeastern corner of Rose Avenue and Crispus Attucks Street.

Reason for Referral:

Towns of Ramapo and Clarkstown

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 site does not meet the minimum lot area standard of 10,000 square feet required for a two-family residence, and provides only approximately one-third of the lot area required for a multifamily structure. The existing structure has already received substantial yard variances to accommodate an oversized residential building on an undersized parcel. The creation of additional residential units will only serve to exacerbate the impacts on the surrounding community and infrastructure. In addition, 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. A substantial increase of the residential density in this neighborhood of non-conforming parcels will negatively impact its community character and infrastructure capacity. Additional residents will generate more traffic on the local streets, leading to congestion and traffic conflicts. While multifamily structures are permitted in the PRD overlay zone, they are subject to the increased level of scrutiny of a special permit and to stricter bulk requirements than one- or two-family dwellings. This site is particularly deficient in meeting these more stringent standards. The site plan application must be denied.

2 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 existing lot area is only 37.5% of the required minimum for multifamily use. The Rose Avenue and Crispus Attucks Street front yards are deficient by 70% and 56%, respectively. The side yard is deficient by 86%. The creation of five total units will result in a unit per acre ratio of more than 29, which is 61% greater than the allowed limit of 18 units per acre. 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. As indicated above, the creation of additional residential units must be denied to maintain the integrity of the zoning ordinance.

3 The parking layout indicated on the site plan is inadequate. Several of the ten required parking spaces indicated on the site plan are located with no regard for existing features or topography. Parking space 7 is located on top of an existing Belgian block curb and partially on grass. Parking space 8 is located through an existing retaining wall. The position of parking space 8 also limits the backup distance of parking space 1 to an inadequate 16 feet. No curb cuts or access to parking spaces 9 and 10 are shown. Accessing these spaces will require vehicles to maneuver across an existing sidewalk. A vehicle in space 9 will likely block access to space 10. Lastly, this inadequate parking layout requires that almost the entire site be covered with impervious surfaces. There is minimal space for landscaping or vegetated buffers. This undersized lot cannot accommodate the parking spaces required by additional units. The application must be denied.

The following comments address our additional concerns about this proposal.

4 The Towns of Ramapo and Clarkstown are the reasons this proposal was referred to this department for review. The Ramapo boundary is adjacent to the southeastern corner of the parcel. The Clarkstown boundary is approximately 340 feet south 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 Towns of Ramapo and Clarkstown 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 these municipalities must be considered and satisfactorily addressed, as well as any additional concerns about the proposal.

5 As per the December 11, 2018 letter from the Rockland County Department of Health, an application is to be made to them for compliance with the County Mosquito Code, should the Village require a stormwater management system.

6 The applicant must comply with all comments made by the Rockland County Sewer District No. 1 in their letter of December 28, 2018.

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7 The submitted narrative indicates that no additional variances are required. Although there is no proposed expansion of the existing structure, a variance application must be made to the Village of Spring Valley Board of Appeals. As previously mentioned, a total of five residential units will result in a ratio of 29.04 units per acre. Section A-6.E(2) limits the maximum number of units per acre to 18. In addition, the increase in the number of units itself requires a new variance application. The creation of additional parking spaces, necessitated by additional units, requires substantial changes to the overall site plan. Section 255-56.D(2)(b) of the Village regulations states that "the Board of Appeals shall take into consideration the benefit to the applicant... as weighed against the detriment to the health, safety and welfare of the neighborhood or community." Factors such as neighborhood character and physical or environmental conditions in the neighborhood, which are being altered by the changes to the site plan, must be considered by the Board of Appeal when making its determination. Lastly, section 255-56.D(2)(c) of the Village regulations states that "The Board of Appeals... shall grant the minimum variance that it shall deem necessary and adequate..." When the Board of Appeals granted earlier area variances, it considered the hardships of the property owner and deemed those variances to be the minimum necessary to provide relief. No further relief should be granted to the property owner without the consideration of the Board of Appeals. Whether or not the property owner is entitled to further develop the property, with or without expanding the existing structure, is a determination for the Board of Appeals. A variance application must be made and submitted to this department for review, as required by New York State General Municipal Law, Section 239-m (3)(a)(v).

8 Due the site changes required by the additional required parking spaces, full sets of proposed landscaping, lighting, and topographic plans must be provided for review.

9 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 Guidelines for Urban Erosion and Sediment Control.

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

11 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.

12 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.

13 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.

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14 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 existing structure has a two-story section, a three-story section, and has a FAR of 0.6. However, the site plan shows the two-story section has a footprint of approximately 1,120 square feet, and the three-story section has a footprint of approximately 1,216 square feet. Assuming each story has a gross floor area equal to its respective footprint, the existing structure has an overall gross floor area of approximately 5,888 square feet. This calculation does not include the basement. This gross floor area results in a FAR of 0.785. Although this is an estimate, a FAR of 0.785 is 31% greater than the allowed maximum FAR of 0.6. The magnitude of this discrepancy requires further attention. The applicant must positively demonstrate that the existing structure conforms 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. This statement must be certified by a licensed surveyor, engineer or architect, not as reported by the property owner as the site plan indicates. If the FAR exceeds the allowable 0.6, the special permit application must be amended, the public hearing notice must be reissued, and an additional variance must be obtained. Any application that is revised due to an increase in FAR must be sent to this department for review.

15 The bulk table and bulk table notes include the parking requirements for a three-family dwelling, not a five-family dwelling. The bulk table and bulk table notes must be corrected. In addition, the scale bar provided on the site plan is a 1'=20' scale. The site plan is drawn at a 1'=10' scale. The scale bar must be corrected.

16 The site plan must include a garbage enclosure that provides access for collection, complies with all yard requirements and does not impede the maneuvering of vehicles on site.

17 An outdoor recreation area must be provided on the site plan.

18 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.

19 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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20 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
Rockland County Office of Fire and Emergency Services
Spring Valley Fire District

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