Rockland County

Ed Day, Rockland County Executive

DEPARTMENT OF PLANNING
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Douglas J. Schuetz
Acting Commissioner

Arlene R. Miller
Deputy Commissioner

February 25, 2019

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

Tax Data: 57.24-1-55

Re: GENERAL MUNICIPAL LAW REVIEW: Section 239 L and M
Map Date: 6/29/2011 **Date Review Received:** 12/24/2018

Item: ***THE COMMONS - 20 CRISPUS ATTUCKS STREET (SV-784F)***

A variance application to allow the construction of two multifamily buildings, with a total of 64 units, on 0.99 acres in the R-2 zoning district and PRD Overlay District. Accessory features, which include 98 parking spaces, a playground, and roadway access, are proposed to be provided on adjacent parcels located in the Town of Ramapo. Variances are requested for the number of parking spaces, front yard, rear yard, building height, number of stories, and floor area ratio. This is a re-approval of the application, as the initial review was not submitted to the Rockland County Department of Planning, as required under New York State General Municipal Law, Section 239L.

A landlocked site, approximately 150 feet east of Rose Avenue and directly northeast of the eastern terminus of Crispus Attucks Street.

Reason for Referral:

Towns of Ramapo and Clarkstown, Pascack Brook

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 Village zoning regulations authorizes 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 multi-family use. With the exception of not having direct access to a roadway, 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 within the requirements of the village zoning regulations.

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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. Including the additional lot area from the adjacent parcels in the Town of Ramapo does mitigate, but does not eliminate, the need for bulk variances. The front and rear yards are deficient by 17% and 80%, respectively. The proposed building height exceeds the maximum standard by 25% and adds an additional story. The FAR exceeds the maximum standard by 183% for the one parcel. The inclusion of the additional parcels within the Town of Ramapo still results in an FAR that exceeds the standard by 30%. The subject property provides zero parking spaces. The combined parcels provide only 77% of the required number of spaces. The number of units per acre for the subject parcel is almost 65, which exceeds the maximum ratio of 18 units per acre by 261%. The ratio for the combined parcels is over 29 units per acre, which is still 61% greater than allowed. 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 proposal must be disapproved and the property developed in a manner that is consistent with the Village's requirements.

3 The bulk table indicates that the proposed FAR will be 1.7. This figure is not consistent with other provided data. The site plan indicates that each building will be 32,200 square feet, for a total gross floor area of 64,400 square feet. This will result in an FAR of 1.50. The inclusion of an additional 8,050 square feet for each of the two basements will result in a total gross floor area of 80,500 square feet, or an FAR of 1.88. Lastly, sheet A-2 of the architectural plans provided by Artistic Building Design Studio, dated August 9, 2017, indicates a total floor area of 43,002 square feet per building. This includes the basement level since it has a proposed ceiling height of nine feet, and is not exempt from FAR calculations. The total floor area of 86,004 square feet results in an FAR of 2.00.

All materials must be consistent. A detailed 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 proposed 1.7, the 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.

The following comments address our additional concerns about this proposal.

4 With a lot area of 0.99 acres, the proposed 64 units results in a density ratio of 64.96 units per acre. Section A6.E(2) of the Village's zoning regulations limits the maximum to 18 units per acre. The bulk table must be amended to indicate that a variance of this section is required. A revised variance application must be submitted, a new public hearing notice must be issued, and the application forwarded to this department for review.

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5 The Towns of Ramapo and Clarkstown are two of the reasons this proposal was referred to this department for review. The Ramapo boundary is adjacent to the northern, eastern, and southern property lines of the parcel. The Clarkstown boundary is approximately 310 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.

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

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

8 A review must be completed by the County of Rockland Drainage Agency and all required permits obtained from them.

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 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.

11 The application form and map note 16 indicate the property receives water service from United Water. The form and map note must be corrected to Suez.

12 Several features of the proposed site plan are located on parcels within the Town of Ramapo, such as retaining walls, landscaped buffers, roadway access, a playground, and all of the proposed 98 parking spaces. These features are integral to the overall site plan and must be included in their entirety. All approvals by the Village of Spring Valley must be conditioned on the applicants obtaining all required approvals from the Town of Ramapo. These approvals include a use variance for parking on Parcel A, a variance and subsequent subdivision of the Pascack Meadows property to create Parcel C, and an amended site plan for Pascack Meadows for the inclusion of retaining walls and landscaping.

13 Map notes must be added to the site plan and deed restrictions must be filed on the land records at the County Clerk's office that indicate that parcels A and C cannot be redeveloped, since they provide the required parking and roadway access for parcel B.

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14 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.

15 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.

16 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 Drainage Agency
Rockland County Sewer District #1
Rockland County Office of Fire and Emergency Services
Spring Valley Fire District

Atzl, Scatassa & Zigler P.C.
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.