

## DEPARTMENT OF PLANNING

Dr. Robert L. Yeager Health Center

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**Douglas J. Schuetz**  
*Acting Commissioner*

**Arlene R. Miller**  
*Deputy Commissioner*

March 19, 2020

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

**Tax Data:** 57.40-1-28.2

57.40-1-28.1

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

**Map Date:** 1/15/2020

**Date Review Received:** 2/28/2020

**Item:** 13-15 BETHUNE BOULEVARD (SV-675B)

A variance application to construct an 18-unit multifamily structure on 0.63 acres in the R-2 zoning district and the PRD zoning overlay district. Variances are required for lot width, front yard, side yard, rear yard, floor area ratio, units per acre, and size of parking spaces.

The western side of Bethune Boulevard, approximately 125 feet south of Clinton Street

### Reason for Referral:

Town of 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 This proposal requires multiple substantial variances. 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 multi-family use. 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 floor area ratio 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, the number of units be further reduced, 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. The front, side, and rear yards are deficient by 33%, 650%, and 40%, respectively. The floor area ratio exceeds the maximum standard by 11%. The proposed number of units allowed for a lot of this size is 60% 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. The proposed building must be reduced in size and the number of units decreased to better comply with the Village's requirements and the property's capacity to be developed.

3 The provided parking is inadequate for the residential structure. Parking spaces 1 and 36 do not have adequate distance from the property's entrance, creating conflicts between vehicles backing out of those spaces and vehicles entering the site. Most significantly, the proposed parking spaces are undersized at only eight feet wide, which will result in the loss of additional parking as larger vehicles will encroach upon neighboring spaces, rendering them unusable. The number of units must be reduced so that an adequate number of appropriately sized spaces can be provided for residents.

The following comments address our additional concerns about this proposal.

4 The Town of Clarkstown is the reason this proposal was referred to this department for review. The municipal boundary is approximately 250 feet east 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 Town of 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 the Town of Clarkstown must be considered and satisfactorily addressed, as well as any additional concerns about the proposal.

5 The applicant must comply with all comments made by the Rockland County Department of Health in their letter of March 6, 2020.

6 An updated review must be completed by the County of Rockland Sewer District No. 1 and all required permits obtained from them.

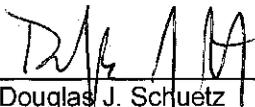
7 A review must be completed by the Rockland County Office of Fire and Emergency Services, the Village of Spring Valley Fire Inspector, or the Spring Valley Fire Department to ensure that there is sufficient maneuverability on site for fire trucks, in the event an emergency arises.

8 Fire lanes must be clearly marked on the site plan, and access to them shall not be impeded.

9 This proposal is comprised of two building lots. The site plan must be amended to note that the two lots are to be merged into a single lot, or indicate that access easements between the two lots will be created.

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- 10 The proposed dumpster enclosure is located behind parking spaces and will not be accessible when vehicles are parked. The dumpster enclosure must be relocated so that it that complies with all yard requirements, does not impede vehicle or pedestrian traffic, and is accessible for pickup when all parking spaces are occupied.
- 11 A turnaround area for parking space 27 must be provided.
- 12 The application form indicates the property receives water service from United Water. The form must be corrected to Suez.
- 13 The proposed residential building must comply with all requirements of the New York State Uniform Fire Prevention and Building Code. All 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.
- 14 A specific height must be provided to determine if the proposed structure is greater than 30 feet to the eaves and requires an aerial apparatus road.
- 15 A floor area ratio calculation, including a floor-by-floor tally of gross floor area, must be provided on the site plan.
- 16 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.
- 17 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.
- 18 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.
- 19 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.

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

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Anthony R. Celentano P.E.  
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.*