Rockland County

Ed Day, Rockland County Executive

DEPARTMENT OF PLANNING
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October 16, 2020

Spring Valley Village 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: 2/18/2020 **Date Review Received:** 9/18/2020

Item: ***15 CHESTNUT STREET (SV-975B)***

A special permit application for a three-story, mixed-use structure on a corner lot with 0.36 acres in the PO zoning district. Eight residential units and 4,600 square feet of office space, with 27 parking spaces provided, are proposed. Variances are required for lot area, lot width (Walnut Place and Chestnut Street), front yard (Walnut Place and Chestnut Street), side yard, floor area ratio, number of parking spaces, size of parking spaces, units per acre, and section 255-22.H (visibility at intersections).
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 The proposed mixed-use structure requires substantial bulk 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 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 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 proposed lot area is 77% of the required minimum. The lot widths for both frontages are 83% of the minimum. The Walnut Place and Chestnut Street front yards are deficient by 67% and 55%, respectively. The side yard is deficient by 46%. The floor rear ratio exceeds the maximum standard by 32%. The number of units per acre exceeds the maximum standard 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. As indicated above, this application must be denied and the property developed in a manner that is consistent with the Village's requirements.

3 In addition to the extensive bulk variances that are required, the proposal requires additional variances for the number of parking spaces, size of parking spaces, and for visibility at intersections. The number of parking spaces provided is deficient by eight spaces, or 23% of the required number. In addition, each space has a width of only eight feet. This reduction in size will likely result in the loss of available parking spaces as larger vehicles encroach upon adjacent spaces, further exacerbating the deficient number of spaces. Lastly, 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 number and scope of required variances indicate a general overutilization of the site. The proposed mixed-use development must be scaled back to more closely conform to the bulk standards, and the number of units reduced.

4 Village officials have previously expressed concern to this department about the increasing traffic congestion along the Route 45 and 59 corridors 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. In order to maintain acceptable levels of congestion, the application must be disapproved, and the number of units and office space reduced.

The following comments address our additional concerns about this proposal.

5 A review must be completed by the County of Rockland Department of Health and all required permits obtained from them.

6 The applicant must comply with all comments made by the Rockland County Sewer District No. 1 in their letter of October 7, 2020.

7 A review shall be completed by the New York State Department of Transportation and any required permits obtained.

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 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.

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

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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 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.

13 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.

14 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.

15 A landscaping plan must be provided that includes low evergreen shrubs or a berm along the southern property line to shield neighboring properties from vehicle headlights.

16 Due to their proximity to the entrance, vehicles exiting parking spaces 1 and 27 will be in conflict with vehicles entering the site. In addition, no turnaround area is provided for parking spaces 14 and 15. The parking area must be reconfigured to avoid traffic conflicts and provide adequate turnaround space.

17 The southwestern corner of the property is labelled as a garbage area. The site plan must be amended to indicate specific locations of dumpster enclosures. Enclosure locations must provide access that does not block, or is blocked by, parked vehicles.

18 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.

19 Retaining walls that are over four (4) feet in vertical height shall be designed by a licensed New York State Professional Engineer and be in compliance with the NYS Fire Prevention and Building Code. Design plans shall be signed and sealed by the licensed NYS Professional Engineer.

20 The rectangular shapes along the southern façade of the structure are not labelled. Any porches or decks and cantilevered living space must be labelled as such and noted as to which story they are located. In addition, the village must ensure that any decks, and their support structures, do not encroach upon parking spaces.

21 The site plan label the existing driveway on the Walnut Place frontage as to be removed and a new sidewalk section to be added.

22 The map notes must include district information.

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23 In recent years, the Rockland County Planning Department has been raising as an issue significant discrepancies with the floor area ratio (FAR) provided on site plans. 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 an FAR of 0.79. However, the site plan indicates that there is a 14' difference between the basement floor elevation and the first floor elevation. This indicates that the basement of the structure is not exempt from floor area ration calculations. The site plan shows a building footprint of approximately 4,600 square feet. Assuming all four stories will have a gross floor area equal to the footprint, the proposed structure will have an overall gross floor area of approximately 18,400 square feet. This would result in an FAR of 1.19. Although this is an estimate, an FAR of 1.19 is 50% greater than the proposed FAR of 0.79. 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; an 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 0.79, 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.

24 The site plan indicates that the proposed structure will have three stories. However, it is unclear whether or not the basement meets the Village's criteria for being considered a story. According to the Village's regulations, the basement shall be considered a story when the finished surface of the floor above it is more than six feet above the grade plane, more than six feet above the finished ground level for more than 50% of the total building perimeter, or more than 12 feet above the finished ground level at any point. The site plan indicates that the first floor elevation will be 501 feet. There is a below grade walkout area along the northern façade. One bottom-of-wall elevation provided for this area is given as 486 feet, a difference of 15 feet below the first floor elevation. This information indicates that the basement does meet the criteria for being considered a story, making the proposal a four-story structure.

The applicant must demonstrate that the proposed structure will conform to the Village's maximum number of stories. Exterior average grades and grade plan calculations must be provided on the site plan. If the number of stories exceeds the required three, an additional variance must be obtained. Any new variance application must be forwarded to this department for review, as required under New York State General Municipal Law.

25 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.

26 The Village shall be satisfied that the proposal complies with the general standards for special permit uses outlined in Section 255-27, as well as the specific standards for mixed use developments outlined in Section 255-28.K.

27 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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28 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 Transportation
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.E.

Rocklarid 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.