

DEPARTMENT OF PLANNING

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Douglas J. Schuetz
Acting Commissioner

Arlene R. Miller
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March 30, 2020

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

Tax Data: 57.40-1-44.5

57.40-1-44.4

57.40-1-44.3

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

Map Date: 9/17/2019

Date Review Received: 2/28/2020

Item: 9-13 LAFAYETTE STREET (SV-988A)

Variances to permit the construction of three two-family dwellings located on 0.17 acres in the R-2 zoning district. The variances required for all Lots include lot area, lot width, side yard, total side yard, and street frontage. A variance for parking is required for Lots 1 and 3 and a variance for rear yard is required for Lots 1 and 2.

West side of Lafayette Street, approximately 166 feet north of White 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 The subject parcels do not meet the minimum lot area standard of 8,500 square feet required for a single-family residence, and provide only one quarter of the lot area required for a two-family dwelling. The lots are non-conforming for width and street frontage, as well. The proposed two-family residences will require substantial yard variances to accommodate oversized residential buildings on undersized parcels. 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 doubling 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 two-family residences are permitted as of right in the R-2 zoning district, they are subject to stricter bulk requirements. These parcels are particularly deficient in meeting these more stringent standards. The required variances must be denied, and only a single-family dwelling permitted on each lot.

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2 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 no unusual conditions or hardships for which any variances 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 properties. Bulk requirements, such as minimum yard size and parking in the side yard, serve an important and necessary function, and should not be dismissed without cause or the identification of a legitimate hardship. As stated above, we recommend that this application be disapproved, and that the properties be developed within the requirements of the village zoning regulations.

3 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 and lot width are only 25% of the required minimums for each lot. The street frontages are 36% of the required minimum. There is no side yard for any lot when 15 feet is required. The total side yard is deficient by 73% for Lots 1 and 3, and no side yard is provided for Lot 2. In addition, Lots 1 and 3 only provide two parking spaces when four are required. 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. To maintain the integrity of the zoning ordinance, the variances must be denied and the two-family dwellings must not be permitted.

4 Variances of this magnitude and extent must not continually be approved. The Village has developed zoning standards that are reasonable and must be followed. If the Village continues to grant variances of this intensity, the intent of the zoning ordinance is undermined. If development that reflects the end result of granting these numerous and significant variances continues, then the zoning ordinance must be amended and a Comprehensive Plan updated and/or created. A plan that reflects current goals and objectives will provide a unified vision for the Village that the zoning code will reflect. With a Comprehensive Plan in place that permits larger development on what is now considered an undersized parcel, the applicant will no longer need to apply for any variances as their development will conform to the overall vision of the Village.

The following comments address our additional concerns about this proposal:

5 The Town of Clarkstown is the reason this proposal was referred to this department for review. The municipal boundary is approximately 440 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.

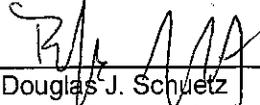
The Town of Clarkstown must be given the opportunity to review the proposal and its impact on community character, traffic, water quantity and quality, drainage, stormwater runoff and sanitary sewer service. The areas of countywide concern noted above that directly impact the Town of Clarkstown must be considered and satisfactorily addressed, as well as any additional concerns about the proposal.

6 A review must be completed by the County of Rockland Department of Health, any comment or concerns addressed, and any required permits obtained.

7 A review must be completed by the County of Rockland Sewer District No. 1, any comments or concerns addressed, and all required permits obtained.

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- 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 sufficient access to the site is provided in the event an emergency arises.
- 9 Map note N must be amended to not refer to section 239 N of the General Municipal Law as no subdivision is currently proposed.
- 10 The calculation for the floor area ratio for each lot must be provided on the site plan so their accuracy can be verified.
- 11 Our department previously reviewed a variance application for tax lot 57.40-1-44.5. The site plan provided with that application had a date of September 17, 2019. The site plan provided with this application appears to be a revision of the previous plan, but also has a date of September 17, 2019. A revision table must be provided with the most recent date provided chronologically.
- 12 The proposed residential building must comply with all requirements of the New York State Uniform Fire Prevention and Building Code. All sidewalks, 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.
- 13 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
- 14 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.
- 15 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 Office of Fire and Emergency Services
Rockland County Sewer District #1
Spring Valley Fire District

Anthony R. Celentano P.E.
Town of Clarkstown

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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.