

DEPARTMENT OF PLANNING

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Douglas J. Schuetz
Acting Commissioner

Arlene R. Miller
Deputy Commissioner

September 23, 2020

Stony Point Planning Board
74 East Main Street
Stony Point, NY 10980

Tax Data: 15.03-5-60.1

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

Map Date: 8/13/2020

Date Review Received: 8/26/2020

Item: *SAINBURY "C" STORE - 133 ROUTE 210 (SP-844A)*

A site plan application to construct a 1,463 square foot addition, with site improvements, to an existing, non-conforming local convenience commercial site on 0.51 acres in the R-1 zoning district. A use variance is required to expand a non-conforming use.

The northern side of Route 210, approximately 85 feet east of Anton Court

Reason for Referral:

Route 210 (CR 106)

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 property is located within the R-1 zoning district, which does not allow local convenience commercial uses by right, Conditional Use permit, or Special Permit. The proposed expansion, therefore, represents an expansion of a non-conforming use and requires a use variance. In addition, a use variance is required if the non-conforming use had ceased operations for more than one year. This department is not generally in favor of granting use variances because of the land use precedent that can be set. An applicant must prove that applicable zoning regulations and restrictions have caused unnecessary hardship in order for a use variance to be granted. To prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located:

- A. The applicant cannot realize a reasonable return, provided the lack of return is substantial as shown by competent financial evidence.
- B. The alleged hardship is unique and does not apply to a substantial portion of the district or neighborhood.
- C. The requested variance will not alter the essential character of the neighborhood.
- D. The alleged hardship is not self-created.

The applicant has not demonstrated that an unnecessary hardship exists. The use variance shall not be granted,

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and the site plan application must be disapproved.

The following comments address our additional concerns about this proposal.

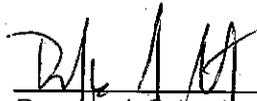
- 2 As per the July 21, 2020 letter from the Rockland County Department of Health, an application is to be made to them for compliance with the County Mosquito Code, should the Town require a stormwater management system.
- 3 As per the September 2, 2020 letter from the Rockland County Highway Department, a Right-of-Way permit must be obtained from them prior to the start of construction.
- 4 The parking spaces for the site are directly adjacent to the residential properties to the north and west of the site. The site plan must be amended to include a landscaped buffer of low, evergreen shrubs or a berm to shield neighboring properties from the headlights of vehicles on site.
- 5 The site plan indicates that the stockade fence along the access easement on the eastern property line will be replaced with vinyl fencing, but does not indicate that it will be relocated. The existing fence encroaches proposed parking spaces and the macadam driveway. The site plan must indicate that the fence is to be relocated, as well.
- 6 The parking spaces on the site plan are incorrectly numbered. The labels for spaces 21 and 26 must be corrected to 17 and 24, respectively.
- 7 The development coverage for the site is proposed to be reduced from 94.5% to 92.9%. However, this still exceeds the maximum development coverage of the H.1 use group by 86%. In addition, the proposed site plan provides 24 parking spaces while the Town zoning regulations require only 15 spaces, which is 60% more than required. The applicant must provide a rationale for the proposed number of spaces, particularly in light of the significant excess of impervious surfaces on site. Otherwise, the applicant must further reduce the number of proposed parking spaces.
- 8 To help reduce the extent of the development coverage non-conformity, pervious pavers and/or other porous materials must be used wherever possible.
- 9 Prior to the start of construction or grading, all soil and erosion control measures must be in place for the site. These measures must meet the latest edition (November 2016) 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.
- 11 The lighting plan must be amended to demonstrate that the intensity of the candle lumens is less than 0.1 at the property line.
- 12 The graphic scale given in the title block of the site plan is 1" = 30". However, the site plan is drawn to a scale of 1" = 20'. The graphic scale must be corrected.
- 13 All proposed signage shall be indicated on the site plan and shall conform to the Town's sign standards.
- 14 Areas designated for snow removal must be clearly delineated on the site plan so that the plow drivers will know where to place the snow piles. This will help to protect the proposed landscaping from damage due to the weight of the snow and salt intrusion. In addition, providing specific locations on the site for the snow piles will reduce the use of parking spaces meant for customers for this purpose.
- 15 A noise-dampening barrier must be installed to shield the adjacent property from the proposed HVAC units and generator.

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16 The Town must require the applicant to maintain hours of operation that are compatible with the surrounding residential area.

17 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.

18 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: Supervisor Jim Monaghan, Stony Point
Rockland County Department of Health
Rockland County Department of Highways
Paul Gdanski P.E.

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.