

DEPARTMENT OF PLANNING

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Douglas J. Schuetz
Acting Commissioner
January 16, 2025

Richard M. Schiafo
Deputy Commissioner

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

Tax Data: 50.69-2-9

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

Map Date: 08/28/2024

Date Review Received: 12/18/2024

Item: *Aaron Yochanon Kraft - 26 Morris Road (GML-24-0374)*

Variance application to permit the construction of a two-family dwelling on 0.20 gross acre (0.19 net) parcel in the R-1A zoning district. The southern portion of the site encroaches into Pascack Brook and the 100-year floodplain. Variances are requested for lot area, side yard, total side yard, and floor area ratio. South side of Morris Road, approximately 405 feet west of Francis Place

Reason for Referral:

Pascack Brook, Town of Ramapo

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:

Recommend the Following Modifications

- 1 Due to the lot area reductions, the subject site does not meet the minimum lot area standard of 8,500 square feet required for a single-family resident. Additionally, a portion of the parcel is within the 100-year floodplain. The proposed two-family residence requires several area variances to accommodate an oversized structure on an undersized parcel. The floor area ratio (FAR) exceeds the permitted maximum by 62 percent. The side yard and total side yard are both deficient by 33 percent. The surrounding neighborhood consists of similarly sized parcels. Granting these bulk variances will continue the trend that has encouraged nearby property owners to seek the same relief. Oversized structures on undersized parcels have resulted in a neighborhood characterized by greater building mass and less green space. A doubling of the residential density on nonconforming parcels in this neighborhood will continue to exacerbate existing local traffic and flooding problems. We recommend that the proposed residence be reduced in scale to better comply with the requirements of the R-1A zoning district.

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- 2 Permitting development that does not comply with the applicable bulk standards is setting an undesirable land use precedent and resulting in the overutilization of individual sites. As previously indicated, the applicant requests four variances to permit a two-family structure, most of which significantly deviate from the Village of Spring Valley's Zoning Code requirements. Additionally, the site is located within the 100-year floodplain on the southern section of the site, which reduces the amount of usable lot area. The ability of the existing infrastructure to accommodate increased residential density on undersized parcels is a countywide concern and must be evaluated. Such development is resulting in local roads becoming more congested, the sewer system and stormwater management system overburdened, and the public water supply taxed. The Zoning Board of Appeals (ZBA) must consider the cumulative and regional impacts of permitting such development.
- 3 The Town of Ramapo is one of the reasons this proposal was referred to this department for review. The municipal boundary is 410 feet north of the site. The Town of Ramapo must be given the opportunity to review the requested variances and provide any concerns regarding intercommunity and Countywide considerations related to the project to the Village of Spring Valley.
- 4 A review must be done by the Rockland County Department of Health to ensure compliance with Article XIX (Mosquito Control) of the Rockland County Sanitary Code.
- 5 The applicant must comply with all conditions made by the Rockland County Sewer District No. 1 in their letter dated December 23, 2024.
- 6 The applicant must comply with all conditions made by the Rockland County Drainage Agency in their letter dated December 30, 2024.
- 7 The engineer of record shall certify to the floodplain administrator for the Village of Spring Valley that the proposed construction is in compliance with the floodplain regulations of the Village and the Federal Emergency Management Agency.
- 8 According to the NYSDEC Hudson Valley Natural Resource Mapper, there may be federally regulated wetlands on the subject property. There may be a need for on-site delineation of wetlands. The United States Army Corps of Engineers must be given the opportunity to review the proposal, any comments or concerns addressed, and any required permits obtained. Any federally regulated wetlands must be depicted on the site plan drawing.
- 9 If the US Army Corps of Engineers requires a permit pursuant to Section 404 of the Clean Water Act for the discharge to fill in Waters of the U.S., then a Section 401 Water Quality Certification (WQC) will be required to verify compliance with State water quality regulations. Issuance of these certifications is delegated in New York State to the NYSDEC. If the project qualifies for a Nationwide Permit, it may be eligible for coverage under a DEC Blanket WQC. Coverage under a Blanket requires compliance with all conditions for the corresponding Nationwide Permit. For more information and to view the DEC Blanket WQCs, please visit <https://www.dec.ny.gov/permits/6546.html>. A determination on Corps jurisdiction and a Nationwide Permit eligibility is likely necessary for a DEC jurisdictional determination.
- 10 One of the reasons this project was referred to County Planning is due to its proximity to the Pascack Brook. The Pascack Brook and its tributaries have historically been impaired for fishing and secondary contact recreation due to urban runoff (unknown biological impacts). Currently there is no data available to conduct an assessment for this waterbody segment <https://extapps.dec.ny.gov/data/WQP/PWL/1501-0015.html>. Nevertheless, the review of development applications within the Pascack watershed, particularly those that exceed development standards, must consider the potential adverse impacts to the Pascack Brook. Development within the Pascack Brook watershed should not result in any further impairment to the Brook and/or its tributaries.

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- 11 According to the Hudson River Natural Resources Mapper (<https://gisservices.dec.ny.gov/gis/hvnm/>) a portion of the site is within the riparian buffer of Pascack Brook. New York's Natural Heritage Program (NHP) has identified riparian buffers to highlight important streamside areas that influence stream dynamics and health. Well-vegetated riparian buffers intercept stormwater runoff, filter sediment and nutrients, and help attenuate flooding. Natural buffers also support unique and diverse habitats, and often serve as wildlife travel corridors. Allowing development that does not comply with the applicable bulk standards, granting substantial variance relief, will result in additional impervious surfaces which will result in the degradation of the quality of local waterways and exacerbate localized flooding. The impact to sensitive environmental resources from this proposal must be strongly evaluated.
- 12 The mapping of the 100-year floodplain is based on historical data and does not account for projected increases in sea level rise and extreme flooding due to climate change. The New York State Community Risk and Resiliency Act (CRRA), and subsequent modifications by the Climate Leadership and Community Protection Act (CLCPA), addresses climate change impacts and attempts to build New York's resilience to rising sea levels and extreme flooding. In August 2020, the New York State Department of Environmental Conservation issued the New York State Flood Risk Management Guidance of Implementation of the Community Risk and Resiliency Act (Guide), which is available at <https://www.dec.ny.gov/lands/102559.html>. This Guide acknowledges that while "FEMA FIRMS and FISs contain the most thorough flood risk data... they are not intended to predict future flooding conditions." While not binding, the Guide incorporates design and siting recommendations that include increasing the vertical flood elevation, and corresponding horizontal floodplain, that result from adding two feet of freeboard to the base flood elevation for non-critical facilities.

The structure, which includes a below-grade basement level, is located roughly seven feet from the FEMA 100-year floodplain, as depicted on the site plan. While this may meet the minimum requirements for participation in the National Flood Insurance Program, the proposed structure likely does not comply with the recommendations found in the Guide, which are based on projected increases in rainfall and flooding events. This department supports the goals of the CRRA and encourages the implementation of strategies identified in the Guide. The ZBA must consider either relocating or reducing the size of the structure to provide additional distance from the floodplain, or requiring that the proposed structure meet the design requirements for construction within a floodplain, which would include eliminating the basement level.

- 13 It will be difficult for a vehicle parked in parking spaces 2 and 4 to maneuver out of the spaces without a turnaround area. No sidewalks, stairs, or exits have been shown on the site plan, making it difficult to assess the parking area in relation to the pedestrian movement on site, and whether there would be safety issues for the residents. A turnaround area must be provided so that vehicles do not have to back out into the roadway. Additionally, all proposed building entrances, window wells, and walkways must be delineated on the site plan demonstrating that they will not impact yard requirements or parking maneuverability.
- 14 All proposed building entrances, window wells, and walkways must be delineated on the site plan demonstrating that they will not impact yard requirements or parking maneuverability.
- 15 Section 255.22.C of the Village Zoning Code exempt open porches and decks from yard and coverage requirements. The Village must confirm that the proposed rear decks must comply with this section and do not include any enclosed spaces.
- 16 Pursuant to New York State General Municipal Law (GML) Sections 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's 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.
- 17 In addition, pursuant to Executive Order 01-2017 signed by County Executive Day on May 22, 2017, County agencies are prohibited from issuing a county permit, license, or approval until the report is filed with the

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County's Commissioner of Planning. The applicant must provide to any County agency which has jurisdiction of the project: 1) a copy of the Commissioner's 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.

- 18 The following additional comments are offered strictly as observations and are not part of our General Municipal Law (GML) review. The Board may have already addressed these points or may disregard them without any formal vote under the GML process:

18.1 The actual building height proposed, and number of stories must be indicated on the bulk table, rather than "<35'" and "<3 story," respectively. The bulk table shall not include estimations.

18.2 Several sections of the Village of Spring Valley Application Review Form are incomplete or incorrectly filled out. The acreage of the parcel must be indicated on Page 1. The water district is listed as United Water, which must be corrected to Veolia North America. The Environmental Constraints and Project History sections on Page 2 must be completed, especially because of the site's proximity to Pascack Brook. All County interests within 500 feet of the site and all corresponding Referral Agencies must be indicated on Page 3 of the Spring Valley Application Review Form. Pages 8 and 9 of the application are blank. Furthermore, Questions A.1 through A.7 on Pages 10 and 11 of the Application Review Form specifically concern area variances. None of these questions have been answered. The Rockland County Planning Board has recommended that applications with a significant amount of missing information not be accepted, and in the future may be returned as "incomplete." Each relevant question on the application review form must be answered to the best of the applicant's ability before it is submitted to the municipality.



Douglas J. Schuetz
Acting Commissioner of Planning

cc: Mayor Alan Simon, Spring Valley
Federal Emergency Management Agency
NYS Department of Environmental Conservation
Rockland County Department of Health
Rockland County Drainage Agency
Rockland County Office of Buildings and Codes
Rockland County Planning Board
Rockland County Sewer District No. 1
United States Army Corps of Engineers
Town of Ramapo Planning Board
Anthony R. Celentano P.E.

*New York State General Municipal Law § 239(5) requires a vote of a 'majority plus one' of your agency to act contrary to the above findings.

The review undertaken by the County of Rockland Department of Planning 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 determines whether the proposed action reviewed implicates the Religious Land Use and Institutionalized Persons Act. The County of Rockland Department of Planning defers to the municipality referring the proposed action to render such opinions and make such determinations as 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.

Pursuant to New York State General Municipal Law §§ 239-m and 239-n, the referring body shall file a report of its final action with the

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County of Rockland Department of Planning within thirty (30) days after the final action. A referring body that 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.