

DEPARTMENT OF PLANNING
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Douglas J. Schuetz
Acting Commissioner

Richard M. Schiafo
Deputy Commissioner

September 10, 2024

Orangetown Town Board
20 Greenbush Road
Orangeburg, NY 10962

Tax Data: 70.05-1-14.2, 70.05-1-17.1, 70.05-1-14.1

Re: GENERAL MUNICIPAL LAW REVIEW: Section 239 L and M
Map Date: 03/27/2024

Date Review Received: 07/12/2024

Item: *38 Ellsworth Drive (GML-24-0113)*

A zoning map amendment to change the zoning of 6.52 acres in the R-80 (Rural Residence) zoning district to the R-15 (Medium Density Residential) district to create a 14-lot subdivision with a single-family dwelling on each lot. There are federally regulated wetlands on the northern section of the subject site.

West side of Western Highway, from Leber Road to Old Western Highway, and northern end of Ellsworth Drive

Reason for Referral:

County Route 36 - Leber Rd, County Route 15 - Western Hwy

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 The proposed zone change will reduce the minimum required lot size for a single-family home from 80,000 square feet to 15,000 square feet, increasing the maximum allowed density permitted on this tract of land. It is recommended that a traffic study be completed to determine the impact of the maximum potential increase in dwelling units on the adjoining County Highways and nearby local roadways.
- 2 The parcel in question is located directly along County Route 15. The Rockland County Highway Department must be given the opportunity to provide their input on the proposed zone change.
- 3 The subdivision plat (Exhibit "D") is undersized and difficult to read. The documents provided with the zoning petition should be sufficiently scaled so that they are legible.
- 4 We request the opportunity to review the subdivision application for the proposed dwellings, as required

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by Section 239 n of the NYS General Municipal Law.

- 5 According to the Hudson River Natural Resources Mapper (<https://gisservices.dec.ny.gov/gis/hvnm/>), and as is indicated on the Full EAF, there are 1.25 acres of federally regulated freshwater forested/shrub wetlands in the northern section on the subject property. A review must be completed by the United States Army Corps of Engineers and all required permits obtained. Any Federal wetlands must be delineated on the subdivision plat. 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://dec.ny.gov/regulatory/permits-licenses/waterways-coastlines-wetlands/protection-of-waters-program> The Town Board must be satisfied that there are no negative impacts to the wetlands, or any wetland buffers and measures are taken to minimize the impacts to sensitive environmental resources on this site.
- 6 The Town Board must be satisfied that this zone change is consistent with the Town's most recent Comprehensive Plan.
- 7 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.
- 8 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.
- 9 The following additional comment is offered strictly as an observation and is not part of our General Municipal Law (GML) review. The Board may have already addressed this point or may disregard it without any formal vote under the GML process:
- 9.1 The GML referral form indicates that the subject parcel is within 500 feet of 'Village, Town, County or State Boundary'. Based on our records the only reason for this referral is the proximity to the County Roads as indicated above.

Douglas J. Schuetz
Acting Commissioner of Planning

cc: Supervisor Teresa Kenny, Orangetown
Rockland County Highway Department
Rockland County Planning Board
United States Army Corps of Engineers
Jay A. Greenwell, PLS, LLC

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*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 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.