

DEPARTMENT OF PLANNING

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Douglas J. Schuetz
Acting Commissioner

Arlene R. Miller
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August 2, 2021

New Hempstead Village Board
108 Old Schoolhouse Road
New City, NY 10956

Tax Data:

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

Map Date: 7/1/2021

Date Review Received: 7/22/2021

Item: *VILLAGE OF NEW HEMPSTEAD - ZONING CODE AMENDMENT (NH-140A)*

Zoning Code amendment to reflect the new zoning designations that were adopted in the Village of New Hempstead Zoning Map.
Throughout the Village

Reason for Referral:

County and State highways; County facilities and parks; Palisades Interstate Parkway; adjacent municipalities

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***

Our department previously reviewed an application for a Zoning Map amendment on January 21, 2021 to update the Map in accordance with the recently adopted Comprehensive Plan Update. Included with that submission was a copy of the associated Zoning Code amendment. The Village has now submitted the Zoning Code amendment, with only minor edits to the formatting and the addition of a Procedures subsection to Section 1 on the Optimized Single Family Cluster. However, the comments made in our January letter have not been addressed, resulting in questions going unanswered and several errors in the text remaining. Therefore, we offer the following comments on the proposed Zoning Code amendment:

- 1 The Village must take into consideration the comments made by the Village Planner for the Village of Pomona in their letter of January 14, 2021.
- 2 The Procedures Section for the Optimized Single-Family Cluster Overlay Zone discusses applications for zone changes to this designation. However, the Official Map has already been approved with the OSFC zones designated. It is unclear why zone change applications are necessary since these overlay zones already exist on the map. Is there the potential for other OSFC zones to be designated in different areas of the Village? This must be explained.

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3 The Village is proposing to create an Optimized Single Family Cluster overlay zone, in which the applicant will propose the bulk regulations for their development. As we stated in our letter addressing the Village's comprehensive plan, dated August 17, 2020, the Village should be wary of allowing the applicant to control the bulk requirements. This may result in a developer taking advantage of the site for their own benefit, at the cost of any conservation easements and/or the preservation of open space. While it is noted that the Village Board has the discretion whether to act or not, based on the proposal, a third party should be included in the discussion of bulk requirements to ensure there is no overutilization of the space.

4 The proposed Optimized Multi-family Cluster Zone is proposed as an overlay zone only for the Matterhorn Property. Restrictions on number of units, building height, and building spacing are provided. It must be clarified if all other bulk requirements for development within this overlay zone must comply with the underlying zoning. With the proposed zone change detailed later in this amendment, the underlying zoning district is the 1R-25 zone, which does not permit multi-family dwellings. Due to this, bulk requirements such as yard standards may be too restrictive for the vision the Village has for this property.

5 Within Section 2.0, it is stated the Optimized Multi-Family Cluster Zone can be developed with a maximum of 100 units. Section 2.2A.a. states 150 units are permitted. The maximum number of units permitted must be consistent and the appropriate section corrected.

6 The Fairway Park Village Center Zone is being proposed, and is set to contain a new Village Hall complex. This area is currently undeveloped land owned by the Town of Ramapo, and is designated as open space. While active and passive recreation is also stated for this zone, we strongly recommend this parcel be preserved in its current state. Only a very small portion of land within the Village remains as open space. There is currently an increase in demand for open space and parkland by the local and national populations. The Village must assess whether the benefits of erecting a building on this site outweigh the loss of open space or area that could be used as parkland. In addition, the undeveloped nature of the site allows it to serve as a buffer between the residential uses to its west and south and the Yeshiva and SUEZ properties located to its east.

7 The Optimized Multi-family Cluster Zone and the Fairway Park Village Center Zone are specifically being created to serve a single property each. It must be explained as to how this does not constitute spot zoning. The ramifications of allowing these zone changes must be fully assessed, including the cumulative impact of permitting the zone changes to the surrounding community character and the land use precedent that may be set. The ability of the existing infrastructure to accommodate the residential density proposed for the Optimized Multi-family Cluster Zone must be evaluated. Allowing the zone change could overburden local roads, as well as the sewer system, stormwater management systems and the public water supply.

8 In addition, it must be explained as to why a new zone must be created for the Fairway Property. The Village government offices are presently located in the 1R-35 zoning district. This district permits the same uses as the 1R-40 zoning district, in which the Fairway Property is situated. Currently, municipal government uses are not listed on the Schedule of Use Regulations. Rather than create a new zone for this one property, the Village shall consider adding municipal government uses a permitted use in the existing 1R zones. Many of the recreational uses proposed for this property in the Comprehensive Plan are already permitted accessory uses under the current zoning standards, as well.

9 The Campus Office Park Zone is proposed for the area that is currently occupied by the Robert Yeager Health Complex, which is County-owned property. This section states that a master plan for the entire site must be provided for any proposed development within this zone. Only the parcel located on the northern side of Sanatorium Road lies within the Village of New Hempstead. Therefore, this is the only parcel that can be zoned to COP. Since the Village does not have jurisdiction of the lower parcel, a master plan for this parcel cannot be required for review. Because this is County-owned land, a discussion must be held with the County about this rezoning in order to ensure the County's best interests are represented for the land in its ownership.

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10 The official zoning map provided with this application includes the Campus Office Park Zone in the key (as Proposed Campus Zone). However, this zone is not depicted on the map. The parcel on the north side of Sanatorium Road must be shaded to represent the COP zone.

11 Section 5, Planned Unit Development Zone, does not include a definition in 5.1. This must be added.

12 While three intersections are listed in the Gateway Improvements section, the boundaries of the Gateway areas are not stated. Without knowing the boundaries, it is not clear where the improvements would be implemented. The Village should consider creating a Gateway Overlay Zone to illustrate the full extent as to where these improvements would be located on the zoning map. In addition, it is unclear if these improvements will be undertaken by the Village, or if applicants are expected to make these enhancements as part of their applications.

13 The Zoning Code amendment is proposing the Village Code be updated to reflect changes based on the recently adopted Zoning Map and Comprehensive Plan. As such, much of the text of this amendment is taken straight from the Plan, with some minor edits and updates. Due to this, much of the proposed amendment reads as a vision for setting the law in the future, rather than a law itself. An example of this can be seen in Section 5.3, which proposes that Section 290-36.6 of the Village Code be created to regulate Planned Unit Development Zones. Permitted uses are provided, and include hotels and certain commercial establishments. However, much of the bulleted list appears to be goals the Villages wishes to achieve with the creation of this zone, rather than the actual regulation of these permitted uses. Further, guidelines are only provided for hotels as an example, and what is provided does not appear to be a complete list of requirements. While the bulk requirements are not the focus of this zone, guidelines must be provided for all permitted uses, beyond just hotels. Since our department reviewed the Zoning Map amendment in January 2021, only the Section for the Optimized Single Family Cluster overlay zone has been updated to include a subsection on procedures. All other sections, including Section 5.3, must be rewritten more precisely to detail the rules and regulations for each of the proposed zones, rather than the prose that lists the goals and vision the Village wishes to achieve in creating them.

14 As noted in the letter from the Village of Pomona mentioned above, the significant zone changes being proposed as an extension of the recently adopted Comprehensive Plan constitute a Type 1 action under SEQRA. A DGEIS must be developed to determine the potential impacts the zone changes will have on the Village.

15 The key on the Official Zoning Map includes different names/abbreviations for the proposed zone from what is included in the text. For example, the key indicates two OCO zones, both are Optimized Cluster Overlay Zones, with one being for single-family and one for multi-family. However, the text states these zones are the Optimized Single Family Cluster (OSFC) and Optimized Multi-family Cluster (OMFC). The text also has the Campus Office Park Zone abbreviated to both COP and OSFC, while the Map labels this as Proposed Campus Office Zone (PCO). The names must be updated across all documents so that all materials remain consistent.

16 When our department reviewed the Zoning Map amendment in January 2021, each zone was illustrated in a different color so they could be easily distinguished. The Official Map submitted at this time has changed most zones to a greyscale, with only the two OCO Zones, Fairway Park, and PUD zones retaining their color. Further, the 1R-25, 1R-35, 1R-40, 1R-50, PCO, and LO zones are all the same color, as are the 2R-15 and NCD zones. In addition, the 1R-25 zone located directly south of the OCO Multi-Family zone still retains its yellow color from the previous map, resulting in it appearing different from all other 1R-25 zones. Each of the greyscale zones shall be recolored so that they do not all appear the same and can be easily discerned from one another. Every instance of a single zone shall also be the same color as all other instances.

17 The area around Rella Drive is currently zoned as 1R-35. However, the included Official Zoning Map indicates this area is 1R-50. It must be clarified if this is an intended zone change, or if this was a mistake made when creating the NCD zone. If the change was intended, it must be explained why these properties are being rezoned, especially since these parcels are much closer to 35,000 SF in size, rather than 50,000 SF.

18 The full date of the latest revision to the Map must be provided.

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19 As the Official Village Map amendment has been approved, our department would appreciate access to a copy of the adopted Zoning Map to make the appropriate changes to the County maintained GIS maps and mapping resources.

20 The following comments address textual errors in this amendment:

- a) Section 1.: This section should be renumbered from Section 1. to Section 1.0 to keep the formatting consistent throughout the document.
- b) Section 1.: Single-Family is written two different ways throughout the Section - "Single-Family," and "Single Family." Only "Single-Family" should be used. All other instances of the phrase without the hyphen should be corrected.
- c) Section 1.2B.2.i.: The letter "a" shall be removed between the "refer the" and "petition."
- d) Section 1.2B.2.iv.: "OSFCZ" should be corrected to "OSFC."
- e) Section 2.0: Multi-Family is written several different ways including "Multifamily," "Multi-Family," and "Multi-family." As each instance is part of the name of the zone, only "Multi-Family" should be used. All other styles should be corrected.
- f) Section 2.2A.: the parcel ID for the Matterhorn property is left blank. The ID of 42.09-2-12 must be added.
- g) Section 7a.: the zones should be corrected to "1R-50" and "1R-25," rather than "R-50" and "R-25."
- h) Section 7b.: Zone 2R-25 does not exist. This must be corrected to either 1R-25 or 2R-15, to reflect whichever zone the change is intended.
- i) Section 7d.: The referenced Section in the underlined phrase must be corrected to 290-57C.(3).
- j) Section 7f.: The new note should be number 11, as Section 7e. proposes a new note numbered 10.

21 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.

22 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 Abe Sicker, New Hempstead
New York State Department of Transportation
Rockland County Department of Health
Rockland County Department of Highways
Rockland County Division of Environmental Resources

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Rockland County Drainage Agency
Rockland County Sewer District No. 1
Palisades Interstate Park Commission

Town of Ramapo
Villages of Pomona, New Square,
Spring Valley, & Wesley Hills

**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.