

DEPARTMENT OF PLANNING

Dr. Robert L. Yeager Health Center
50 Sanatorium Road, Building T
Pomona, New York 10970
Phone: (845) 364-3434 Fax: (845) 364-3435

Douglas J. Schuetz
Acting Commissioner

Richard M. Schiafo
Deputy Commissioner

June 24, 2024

Montebello Zoning Board of Appeals
One Montebello Road
Montebello, NY 10901

Tax Data: 48.10-1-36

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

Map Date: 05/29/2024

Date Review Received: 06/07/2024

Item: *Jacob Leitner - 8 Henry Court (GML-24-0057)*

Variance application to permit the construction of an accessory structure, and to designate one room in a single-family dwelling as a residential gathering place for religious purposes. The subject site is on a 1.08-acre lot in the R-35 zoning district. Variances are requested for floor area ratio, side yard, fence height, and number of required parking spaces.

North side of Henry Court, approximately 220 feet north of Zeck Court

Reason for Referral:

Mahwah River, US Route 202 - Haverstraw Rd

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 bulk table on the site plan states the zoning district is R-25 and uses the bulk requirements from use group t of the Village's zoning code. However, the site is located in the R-35 zoning district, and must use the bulk requirement standards listed under use group q. The applicant shall resubmit the site plan with the correct bulk requirements listed, and should ensure all application materials are consistent.
- 2 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. We caution the Village to consider precedent before granting a variance to increase floor area ratio (FAR). This bulk standard can particularly define the neighborhood's community character. Granting a FAR that is 10 percent greater than permitted could set a precedent that may result in nearby property owners seeking the same relief. The side yard is also significantly deficient by 97 percent. The Zoning Board of Appeals (ZBA) must

Jacob Leitner - 8 Henry Court (GML-24-0057)

consider the cumulative and regional impacts of permitting such development before granting variances.

- 3 The lot area and lot width are pre-existing, non-conforming uses for the single-family dwelling. The applicant is now proposing to add an additional residential gathering use to the site, which requires a special permit. The Village shall determine whether variances are now needed from these standards due to the new use.
- 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 A review shall be completed by the Rockland County Drainage Agency and any required permits obtained.
- 6 The applicant must comply with the comments made by the Rockland County Sewer District No. 1 in their June 14, 2024 letter.
- 7 The subject site is within the 100-year floodplain of the Mahwah River according to the maps made available to the Rockland County GIS division via the FEMA Flood Map Service Center. The engineer of record shall certify to the floodplain administrator for the Village of Montebello that the proposed construction is in compliance with the floodplain regulations of the Village and the Federal Emergency Management Agency.
- 8 According to maps maintained by the Rockland County GIS division, there are federally regulated wetland along the riverbank of the Mahwah River on the subject site. If there is any encroachment into the wetlands, a review must be completed by the United States Army Corps of Engineers and all required permits obtained.
- 9 The New York State Department of Transportation shall be given the opportunity to review the proposed development, any comments or concerns addressed, and needed permits obtained.
- 10 The New York Natural Heritage Program's (NHP) database, as reflected on the Hudson Valley Natural Resource Mapper (<https://gisservices.dec.ny.gov/gis/hvnm/>), indicates that a portion of the site is within the riparian buffer of the Mahwah River. The 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. The Board must consider the impact of additional structures and impervious surfaces in and/or near the riparian buffer and the potential degradation of water quality and intensification of localized flooding.
- 11 Despite a stormwater pollution prevention plan (SWPPP) not being required, due to the steep slopes on the site, the Village must be satisfied that the proposal provided adequate information for managing construction and post-construction stormwater.
- 12 To help reduce the impact of this development, a reduction of impervious surfaces should be considered. Permeable pavers and additional green infrastructure techniques should be considered such as bioswales, rain gardens, and rainwater capture. It is recommended that the applicant review Chapter 5 "Green Infrastructure Practices" of the 2015 NYSDEC Stormwater Design Manual.
- 13 All proposed building entrances, exterior stairways, decks, window wells, and walkways must be delineated on the site plan demonstrating that they will not impact yard and setback requirements or increase the development coverage. Parking maneuverability shall not be affected by the location of these features.
- 14 The site is located within the Historic and Scenic Roads Overlay District, and may require a certificate of appropriateness from the Village's Historic Preservation and Parks Commission prior to construction if the proposed accessory structure and fence do not meet the exemptions listed in Section 195-64.1 of the Village Code.

Jacob Leitner - 8 Henry Court (GML-24-0057)

- 15 Residential gathering places located in the R-35 zoning district require a special permit from the Planning Board. We request the opportunity to review said special permit, as required by New York State General Municipal Law Section 239-m (3)(a)(iii).
- 16 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.
- 17 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.
- 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 Several sections of the Village of Montebello Application Review Form have incorrect information. Page 1 indicates that the water district is United Water. This must be corrected to Veolia North America. On Page 3, Harriman State Park was listed as being within 500 feet of the property, this is incorrect and should be removed. Additionally, Rockland County Highway Department was incorrectly identified as a referral agency, this should be corrected to the NYS Department of Transportation.
- 18.2 The actual building height must be indicated on the bulk table, rather than "2 stories". The bulk table shall not include estimations.



Douglas J. Schuetz
Acting Commissioner of Planning

cc: Mayor Lance Millman, Montebello
Federal Emergency Management Agency
NYS Department of Transportation
Rockland County Department of Health
Rockland County Drainage Agency
Rockland County Planning Board
Rockland County Sewer District No. 1
Kevin P. Maher, P.E., M.ASCE

Jacob Leitner - 8 Henry Court (GML-24-0057)

*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.