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Planning Board  
Town of Ramapo  
237 Route 59  
Suffern, NY 10901

Re: Avon Gardens East – GML review

Dear Members:

We represent the applicant in the above matter, which seeks site plan approval for a 46 unit multi-family development under MR-16 requirements. We write in response to the Rockland County Planning Department's review letter dated September 6, 2022, but not received until today, September 7, 2022, the day of your meeting.

The Department states that it received its referral materials on July 29, 2022. This means that the normal thirty-day window for responding expired on August 30. As we have previously written, General Municipal Law § 239-1 allows an extension until two days prior to the meeting at which final action is expected to be taken. That meeting date is tonight. The Department, which insists that applicants strictly adhere to requirements, has failed to adhere to this time requirement. Its review is therefore void.

Nevertheless, we feel that we must respond. This is one of the most egregious examples of the Department's overreaching that we have seen in over forty years of land use practice. The Department completely ignores the grant of a use variance to this site. It ignores the project improvements that have been made to protect the wetlands since the use variance was granted.

Quite simply, because there is no legal recourse available against the Department, it feels free to invent its own standards and to ignore applicant's rights.

Not surprisingly, the Department has disapproved this project. As it states, it disapproved the use variance and now seeks to relitigate the issue. It must not be allowed to do so.

We note, however, that when the Department went into the details of the project, it found nothing objectionable. It simply does not want a multi-family development. That is not a choice the Department gets to make.

*1 Multifamily residences are not an allowed use in the R-15 zoning district. In our December 10, 2013 review of the use and bulk variance application for this project, this department objected to the granting a use variance. 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 provided any financial evidence that a reasonable return cannot be realized. Furthermore, while there is an existing multifamily development nearby, that development is not accessible from Viola Road. Additionally, most of the surrounding neighborhood is characterized by single-family residences or is undeveloped or open space. Therefore, the proposed development is substantially different in character from the neighborhood. The applicant had not demonstrated that an unnecessary hardship exists. This department renews its objection to the creation of a use that is not permitted in the R-15 zoning district. The application must be disapproved.*

This comment ignores the fact that a use variance was previously granted and runs with the land. It has not expired. It has not been voided. The applicant does not need to renew the use variance or to re-prove its case. The Department staff needs a refresher course in land use law.

***The applicant asks that this comment be overridden.***

*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. Since the proposed development requires a use variance, and there is no Use Group for multifamily developments in the R-15 zoning district, the bulk requirements for multifamily developments in the MR-16 zoning district were used for this proposal. However, additional bulk variances from the MR-16 requirements for lot area, front yard, front setback, and side setback are necessary. Furthermore, the proposed development has a residential density substantially greater than what is allowed in the R-15 zoning district. The bulk requirements for detached two-family residences and attached single-family residences allow a maximum residential density in the R-15 zoning district of 4.36 units per acre. The proposed development has a residential density of 13.81 units per net acre, which is over three times the allowed density. The ability of the existing infrastructure to accommodate increased residential density is a*

*countywide concern and must be evaluated. This evaluation must consider whether local roads will become more congested and the sewer system, stormwater management systems and the public water supply will be overburdened. The Town must consider the cumulative and regional impacts of permitting such development. The application must be disapproved, and the property developed in compliance with the use and bulk requirements of the R-15 zoning district.*

This is sheer nonsense. We all know that a multi-family development does not comply with bulk requirements for a single family district. That is why the ZBA granted variances.

***The applicant asks that this comment be overridden.***

*The following comments address our additional concerns about this proposal.*

*3 The Villages of New Hempstead and Spring Valley are two of the reasons this proposal was referred to this department for review. The New Hempstead boundary is adjacent to the northern and eastern property lines of the site. The Spring Valley boundary is approximately 360 feet west of the site. New York State General Municipal Law states that the purposes of Sections 239-I, 239-m and 239-n shall be to bring pertinent inter-community and county-wide planning, zoning, site plan and subdivision considerations to the attention of neighboring municipalities and agencies having jurisdiction. Such review may include inter-community and county-wide considerations in respect to the compatibility of various land uses with one another; traffic generating characteristics of various land uses in relation to the effect of such traffic on other land uses and to the adequacy of existing and proposed thoroughfare facilities; and the protection of community character as regards predominant land uses, population density, and the relation between residential and nonresidential areas. In addition, Section 239-nn was enacted to encourage the coordination of land use development and regulation among adjacent municipalities, and as a result development occurs in a manner which is supportive of the goals and objectives of the general area.*

*The Villages of New Hempstead and Spring Valley must be given the opportunity to review the proposal and its impact on community character, traffic, water quantity and quality, drainage, stormwater runoff and sanitary sewer service. The areas of countywide concern noted above that directly impact these municipalities must be considered and satisfactorily addressed, as well as any additional concerns about the proposal.*

Comment noted.

*4 The applicant must comply with all comments made by the Rockland County Department of Health in their letter of August 2, 2022.*

The applicant will comply with all applicable requirements.

*5 The applicant must comply with all comments made by the Rockland County Sewer District No. 1 in their letter of August 1, 2022.*

The applicant will comply with all applicable requirements.

*6 On March 7, 2022, the Rockland County Department of Highways issued comments on the December 9, 2021 revision to the site plan. Since that time, the applicant has submitted a traffic impact study, dated June 2, 2022, and has been in contact with the Rockland County Department of Highways regarding proposed improvements to Viola Road. The applicant must comply with all conditions and obtain all required permits from the Rockland County Department of Highways.*

The applicant will comply with all applicable requirements.

*7 The designated floodplain administrator for the Town of Ramapo shall certify that the proposed construction is in compliance with the floodplain regulations of the Town and the Federal Emergency Management Agency.*

Comment noted.

*8 A review must be completed by the Rockland County Office of Fire and Emergency Services, the Town of Ramapo Fire Inspector, or the Moleston/Hillcrest Fire Department to ensure that the site is designed in a safe manner and that there is sufficient access to, and maneuverability on, the site emergency vehicles.*

The Fire Inspector has reviewed the project.

*9 Due to the presence of state wetlands, a review must be completed by the New York State Department of Environmental Conservation and all required permits obtained from them.*

The project does not encroach into the wetlands or into the regulated area surrounding the wetlands. The applicant will comply with all applicable requirements.

*10 There shall be no net increase in the peak rate of discharge from the site at all design points.*

The applicant will comply with all applicable requirements.

*11 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.*

The applicant will comply with all applicable requirements.

*12 In order to ensure that there is no encroachment into the state wetland 100' buffer area, the Limit of Disturbance shall be clearly delineated in the field prior to the start of construction, grading, or clearing of the site.*

The applicant will comply with all applicable requirements.

*13 Water is a scarce resource in Rockland County; thus proper planning and phasing of this project are critical to supplying the current and future residents of the Villages, Towns, and County with an adequate supply of water. The water system must be evaluated to determine if the additional water supply demands of the proposed development can be met. Domestic and fire demands of the project must be determined by a Licensed Professional Engineer and provided to the supplier of water for analysis. Demand calculations and results of the analysis must be provided to the Rockland County Department of Health for review.*

The applicant will comply with all applicable requirements.

*14 If any public water supply improvements are required, engineering plans and specifications for these improvements shall be reviewed and approved by the Rockland County Department of Health prior to construction in order to ensure compliance with Article 11 (Drinking Water Supplies) of the Rockland County Sanitary Code and Part 5 of the New York State Sanitary Code.*

The applicant will comply with all applicable requirements.

*15 For installation of a sanitary sewer system, engineering plans and specifications shall be reviewed and approved by the Rockland County Department of Health prior to construction.*

The applicant will comply with all applicable requirements.

*16 All proposed signage shall be indicated on the site plan and shall conform to the Town's sign standards.*

The applicant will comply with all applicable requirements. The applicant reserves the right to seek a variance or waiver.

*17 The parking requirement calculation provided on the site plan indicates that 69 parking spaces are provided. However, the site plan itself indicates that there will be 70 parking spaces provided. All materials must be consistent. The applicant must clarify their intentions and parking requirement calculation or the site plan must be amended, as appropriate.*

A late change to the northerly access point may allow the installation of one additional parking space, increasing the number from 69 to 70. That change must be formally

approved by the Rockland County Highway Department before it is implemented. At 69 spaces, the project allows 1.5 spaces per unit.

*18 The narrative, dated November 1, 2021, and the Full Environmental Assessment Form (FEAF), dated November 18, 2021, indicate that 44 dwelling units are proposed and 66 parking spaces are provided. The Affidavit Pursuant to Section 809 of the General Municipal Law also indicates that 44 dwelling units are proposed. However, the site plan indicates that 46 units are proposed and either 69 or 70 spaces are provided, as noted in the previous comment. All materials must be consistent. The applicant must clarify the number of units proposed and parking spaces provided. The public hearing notice must be reviewed and re-issued if it contains inaccurate information. If the proposal contains more than 44 dwelling units, the FEAF must be updated with revised figures for water usage and liquid waste generation.*

The Department ignores the fact that projects change during the review cycle. These changes need not be reflected in documents submitted at earlier stages, so long as they are consistent with the earlier documents.

***The applicant asks that this comment be overridden.***

*19 The narrative and site plan indicate that a 25-wide slope easement along Viola Road is to be abandoned. More information must be provided as to the nature of this easement and all associated parties must be identified. The Planning Board must be assured that the abandonment of this easement will not result in a negative impact to any environmentally sensitive resources.*

Comment noted.

*20 The parcels indicates in the application materials do not include the right-of-way for Van Ness Road, which has been incorporated into the proposal. The ownership and disposition of Van Ness Road must be established.*

Van Ness Road has never been accepted for dedication by the Town of Ramapo. It is owned by the applicant.

*21 A floor area ratio (FAR) calculation must be provided on the site plan so its accuracy can be verified. In addition, the bulk table shall not include estimations. The proposed FAR must be provided in the bulk table.*

The proposed FAR is significantly less than the FAR of 0.94 granted by the ZBA. Calculations will be provided.

*22 Pursuant to the Rockland County Sanitary Code, Article XIII, Section 13.8.1, all multiple dwellings with three or more rental units must register and obtain a Multiple Dwelling Rental Certificate (MDRC). If this proposed multi-family dwelling meets the requirements of the Multiple Dwelling Rental Registry requirement, then the owner must*

*register and obtain the MDRC. Failure to comply is a violation of Article XIII, which may result in penalties of \$2,000 per day.*

This comment has nothing to do with the site plan, and does not come into effect until there is occupancy.

*23 As required by the Rockland County Stream Control Act, the proposed lot merger must be reviewed and signed by the Chairman of the Rockland County Drainage Agency before the County Clerk can accept the plan to be filed.*

A subdivision plat is not required. The subdivision will be abandoned. The Rockland County Stream Control Act is not applicable.

*24 Once a subdivision has been approved, a filed map cannot be used to convey property, nor can the tax maps be updated with the lot changes, until the deeds are filed with the County Clerk, conveying the portions of the lots that are required to achieve the lot configuration indicated on the subdivision map. The applicant and the Town must make sure that the deeds are properly filed with the Rockland County Clerk to ensure that the tax maps are properly updated.*

The Department's attention is drawn, once again, to section 560 of the NY Real Property Tax Law, which allows abandonment of subdivisions more than five years old. No plat is needed, and none will be filed.

*25 Sections C.3.a and b of the Full Environmental Assessment Form (FEAF) provided indicate that the property is located in the MR-16 zoning district and that the proposed use is permitted or allowed by special or conditional use permit. The FEAF must be corrected to note that the property is located in the R-15 zoning district and that the proposed use is not permitted or allowed by special or conditional use permit.*

This is false. The Department continues to ignore the use variance that was granted. Wishing the use variance was not granted does not make it go away.

***The applicant asks that this comment be overridden.***

*26 Retaining walls shall be designed by a licensed New York State Professional Engineer and be in compliance with the NYS Fire Prevention and Building Code. Design plans shall be signed and sealed by the licensed NYS Professional Engineer.*

Comment noted.

*27 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.*

Comment noted.

*28 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.*

Comment noted.

*29 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.*

*29.1 The GML referral form indicates that the project is located within the MR-16 zoning district and must be corrected.*

*29.2 Section 2.3 of the Stormwater Pollution Prevention Plan (SWPPP), revised July 19, 2022, states that the project is "consistent with its MR-16 zoning" and "complies entirely with the Town's bulk zoning requirements." The project is located within the R-15 zoning district and has been granted a use variance as well as area variances from the MR-16 bulk requirements. The SWPPP must be corrected.*

See response to comment 25.

***The applicant asks that these comments be overridden.***

***The applicant therefore asks that comments 1, 2, 18, 25, 29.1 and 29.2 be overridden for the reasons stated, and that the entire report be rejected as being untimely.***

Very truly yours,  
EMANUEL LAW P.C.



By: \_\_\_\_\_  
Ira M. Emanuel, Esq.

Cc: Client