



Edward A. Diana
County Executive

ORANGE COUNTY DEPARTMENT OF PLANNING

DAVID CHURCH, AICP
COMMISSIONER

www.orangecountygov.com/planning
planning@orangecountygov.com

124 MAIN STREET
GOSHEN, NEW YORK 10924-2124

TEL: (845) 615-3840
FAX: (845) 291-2533

County Reply – Mandatory Review of Local Planning Action as per NYS General Municipal Law §239-1, m, & n

Local Referring Board: Town of Newburgh Zoning Board of Appeals **Referral ID #:** NBT 30-13M

Applicant: Balmville Construction Inc. **Tax Map:** 47-1-28.2

Proposed Action: Area variance related to the minimum buildable area. **Local File #:**

Reason for County Review: The project site is within 500 feet of County Route 23

Date of Full Statement: August 1, 2013

Comments:

County Planning is in receipt of the GML §239 referral for the above referenced Project. The Project Site is within one of the Counties' identified Priority Growth Areas; therefore development that is sensitive to the surrounding resources is encouraged. Our office has identified potential concerns; therefore, County Planning recommends that the Board make a decision only after weighing the benefit to be realized by the Applicant against the potential detriment to the health safety and general welfare of the neighborhood and/or community. In an effort to aid the Board in making their decision, our office recommends working with the Applicant to understand the balancing test outlined in §267-b(3)(b) of the NYS Town Law which consists of the following:

- *"In making such determination the board shall also consider: (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance."*

County Planning recommends that the Board fully evaluate the Application against item no. 1, 4 and 5 of the balancing test described above. Our office is concerned with the use of flag lots and general layout of the proposed subdivision related to the Application, but we will fully comment on the subdivision layout when the Application is referred by the Planning Board. Although the subdivision itself is not subject the ZBA's scrutiny, it plays into understanding the balancing test.

1. The proposed layout of the subdivision is not consistent with the surrounding neighborhood. The proposed lot lines create inappropriately shaped lots, which will likely cause ownership disputes, other issues, etc. in the future. Additionally, there are existing constraints of the parcel, notably the NYSDEC wetlands and the 100 foot adjacent area, which may not have been adequately considered. County Planning recommends the Applicant develop a subdivision plan that takes

into account the constraints and the existing neighborhood without over utilizing the parent parcel. While the Applicant is concerned with maximizing the number of building lots, the subdivision plan should be sensitive to the environmental constraints of the parent parcel. In an effort to develop a plan that fits into a quality community, our office recommends the Applicant review the Orange County Design manual, which is downloadable from http://www.orangecountygov.com/filestorage/124/1362/4663/Orange_County_Design_Manual.pdf, in an effort to implement appropriate siting of proposed dwellings, consider layout alternatives, protect the natural environment, etc.

2. The Town of Newburgh code allows for the use of "flag lots", which when utilized in a large enough area that includes distance separation and buffering of homes there is a potential develop better quality development lots. Although, as stated under comment no. 1, our office has determined the proposed subdivision is not in-line with the County *Comprehensive Plan*; the expansion of a quality community, nor consistent with the existing neighborhood. In this instance County Planning recommends that the Board fully evaluate the potential of granting a variance related to the minimum required buildable area associated with a self-created difficulty through the proposal of poor quality development lots that may be unsellable.
 - a. As mentioned in comment no. 1, proposed lots no. 1 and 4 propose lot lines that create undesirable shaped lots, in an effort to increase the potential density of the subdivision.
 - b. Proposed Lot No. 2 and 3 intrude on the rear or potentially private space of proposed Lots No. 1 and 4. Therefore, in order to gain some privacy future owners would need to develop extensive improvements to screen the neighboring residence.
 - c. Additionally, the location of the proposed dwellings provides limited viable rear yard due to the proposed property lines or the NYSDEC 100 foot adjacent area. The only area for proposed lots no. 2 and 3 to implement future landscape improvements or add-on to the dwelling is within the NYSDEC adjacent area, which can cause future resident unneeded financial burden through the required permitting process. Some area is provided at the sides of the proposed dwellings, where future landscape improvements, dwelling additions and outdoor amenities could be installed, but that area is significantly reduced due to the proposed septic system locations.

County Planning recommends the removal or relocation of the flag lots associated with this application. One option is to limit the subdivision to three (3) units, all of which are able to relate to the roadway and allow adequate space for appropriate buildable area and private space.

Ultimately, our office has determined that granting the requested variance will likely (1) produce an undesirable change to the character of the neighborhood or a detriment to nearby properties will be created; (2) have an adverse effect or impact on the physical or environmental conditions in the neighborhood; and (3) the alleged difficulty was self-created by the Applicant. Based upon the above information the County recommends that the Board disapprove the requested area variance.

County Recommendation: Disapproval

Date: August 8, 2013

Prepared by: Chad M. Wade, R.L.A.
Planner



David Church, AICP
Commissioner of Planning

As per NYS General Municipal Law 239-m & n, within 30 days of municipal final action on the above referred project, the referring board must file a report of the final action taken with the County Planning Department. For such filing, please use the final action report form attached to this review or available on-line at www.orangecountygov.com/planning.