



Rockland County

Ed Day, Rockland County Executive

DEPARTMENT OF PLANNING

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Douglas J. Schuetz
Acting Commissioner

Arlene R. Miller
Deputy Commissioner

February 27, 2019

Airmont Zoning Board of Appeals
251 Cherry Lane
P.O. Box 578
Tallman, NY 10982

Tax Data: 56.14-2-39

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

Map Date: 7/27/2018

Date Review Received: 1/18/2019

Item: *WEISZ RESIDENCE - 43 BESEN PARKWAY (A-204)*

An appeal of the Building Inspector's determination to deny, and a variance application to allow, the use of a detached structure as a recreation room with an indoor pool and lounge for an existing single-family dwelling on 0.64 acres in the R-25 zoning district.

The south-by-southeastern side of the cul-de-sac terminus of Besen Parkway.

Reason for Referral:

New County Road (CR 81)

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 According to the provided narrative, the central issue of the appeal, and the request for a variance, is whether or not the detached structure should be considered a garage as it relates to Section 210-25.C of the Airmont Zoning Code, which prohibits the removal or conversion of garages. Since the subject property provides adequate outdoor off-street parking, the County does not have an interest in the applicability of Section 210-25.C to the subject property.

However, the County does have concerns regarding the permissibility of converting a detached structure from non-habitable space to living space. The creation of living space within detached structures must be done with explicit controls and guidelines regarding allowed uses. Issues that can have a substantial impact on quality of life and infrastructure capacity, such as the creation of additional dwelling units, the renting of space to non-residents, or the commercial use of a space, can potentially arise in the absence of clear regulations and adequate enforcement.

According to Section 210-17.C, permissible accessory uses in the R-25 zoning district include "greenhouses, barns, silos, sheds, garages, tennis courts, swimming pools and other similar structures." The Village regulations do not explicitly allow detached finished living spaces as accessory uses. However, the phrase "other similar

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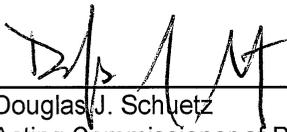
structures" may be interpreted to allow such spaces. The Zoning Board of Appeals must determine if habitable space within a detached structure is a permissible accessory use. If the Board determines it is permissible, then it must provide a rationale for its decision and thereby provide guidance and criteria for the permitting of such uses going forward.

If the Board determines it is not a permissible accessory use, then a use variance is required to allow the proposed conversion. The granting of use variances requires the demonstration of substantially higher burdens to the applicant than those required by area variances. Specifically, to obtain a use variance, the applicant must prove unnecessary hardship and 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.

Since the application at hand does not attempt to prove there is an unnecessary hardship, a new application must be made to the Board, should the Board determine that a use variance is necessary. Such an application must be forwarded to this department for review.

2 Approval of this proposal must be conditioned on the explicit statement that the space within the detached structure is solely for the recreational use of the residents of the property's principal dwelling; and that it cannot be rented to non-residents, used as an additional dwelling unit or sleeping quarters, or used for a private occupation, such as personal fitness training. The Village must consider requiring that an affidavit be filed on land records stating these restrictions will be conformed to by the owners of the property.



Douglas J. Schuetz
Acting Commissioner of Planning

cc: Mayor Philip Gigante, Airmont
Rockland County Department of Highways

Ira M. Emanuel, P.C.

**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.