



COUNTY OF ROCKLAND
DEPARTMENT OF PLANNING

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C. SCOTT VANDERHOEF
County Executive

THOMAS B. VANDERBEEK, P.E.
Commissioner

September 12, 2013

ARLENE R. MILLER
Deputy Commissioner

Clarkstown Zoning Board of Appeals
10 Maple Avenue
New City, NY 10956

Tax Data: 58.18-1-26

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

Map Date:

Date Review Received: 8/15/2013

Item: *SF PROPERTIES, LLC (C-791Q)*

Use variance to permit a retail use within an 8,500 sq. ft. portion of an existing 122,000 sq. ft. building in the LIO zoning district. Retail uses are not an allowable use in the LIO zoning district.
Southeast corner of Demarest Mill Road and NYS Route 304, north side of West Nyack Road

Reason for Referral:

NYS Route 304

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***

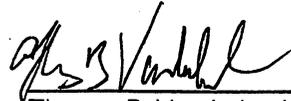
- 1 This department is not generally in favor of granting use variances because of the land use precedent that can be set. An applicant must prove unnecessary hardship in order for a use variance to be granted. The Otto test requires the demonstration of the following:
- A. The applicant cannot realize 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 must demonstrate that they have met all of the above criteria in order for the use variance to be granted.

SF PROPERTIES, LLC (C-791Q)

2 The Zoning Board of Appeals should determine if there have been other similar requests for use variances in the LIO zoning district in this neighborhood. If so, and these use variances have been granted, then the Zoning Board should suggest to the Town Board that a comprehensive study should be undertaken of the neighborhood to determine if it would be more appropriate to rezone some of the parcels within the LIO zoning district in this vicinity to a zoning district which permits retail uses. Rezoning is a more appropriate zoning tool to achieve the desired land uses, as bulk regulations for the zoning district provide standards that can be used to determine compliance.

3 If the Zoning Board of Appeals determines that the use variance should be granted, then bulk standards applicable to the use must be provided, including as a minimum, parking requirements.



Thomas B. Vanderbeek, P.E.
Commissioner of Planning

cc: Supervisor Alex Gromack, Clarkstown
New York State Department of Transportation
Adam K. Kurland

Clarkstown Planning Board, Attention Joe Simoes

**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.