



# Rockland County

Ed Day, Rockland County Executive

## DEPARTMENT OF PLANNING

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**Douglas J. Schuetz**  
*Acting Commissioner*

**Arlene R. Miller**  
*Deputy Commissioner*

April 3, 2018

Clarkstown Town Board  
10 Maple Avenue  
New City, NY 10956

**Tax Data:** 43.15-1-37

43.15-1-22

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

**Map Date:**

**Date Review Received:** 3/6/2018

**Item:** *NEWTON ASSOCIATES, LLC - DRIVE THROUGH WINDOWS H4 ZONE (C-3413E)*

Zoning Code Amendment to permit drive through windows for restaurants in the H-4 zoning district. A minimum of five acres is required for this proposed use.

Generally, east side of Main Street, west side of NYS Route 304, south of New City Gardens, north of Laurel Road

### Reason for Referral:

New Hempstead Road/Congers Lake Road (CR 80), N. Main Street (CR 29), Collyer Avenue (CR 76), NYS Route 304, Demarest Kill, Rockland County Government Center, Dutch Garden, Zebrowski-Morahan Demarest Kill Park

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 Town of Clarkstown undertook an extensive effort to determine their vision for the various hamlet centers. The New City Hamlet Center was created, with specific goals and objectives that would direct development in the future. Various hamlet zoning districts were created in New City, with specific criteria to attain the visions for different sections of the hamlet center. Specifically, the H-4 zoning district was envisioned to promote development and redevelopment along the Main Street corridor which would define a consistent public street space and enhance the pedestrian environment. To this end, new buildings in this district fronting Main Street are encouraged to be two stories. Additionally, mixed-use residential developments are encouraged to provide housing opportunities and promote an active streetscape both day and night.

The proposed zoning code amendments to permit drive through windows for restaurants, seem to be somewhat contradictory to the goals and objectives for the H-4 district. Drive through windows tend to promote vehicular usage, instead of promoting pedestrian activities. In addition, the location of the buildings with drive through

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windows tend to be set back further from the road, again, in contradiction to encouraging the building form to be located closer to the road, and creating public areas.

We have several concerns regarding this proposal and list them below:

1.1 The Clarkstown Town Board must assess whether the amendments to the zoning ordinance will undermine the intent of the New City Hamlet Zoning. Specifically, all of the requirements under Section 290-7.5 must be reviewed to ensure that there are no conflicting sections of the code with the proposed changes. This must include setback requirements, landscaping, parking, and design features. Table E-1 may need to be modified, to permit a building that is more than 15 feet from the front yard setback. In addition, greenspace may need to be added to the site to comply with the code requirements. In order not to undermine the intent of the H-4 zoning district, a thorough analysis of the proposal must be weighed against the existing use standards.

1.2 To ensure that the Clarkstown Planning Board has the ability to review any drive through window proposal, we recommend that this use not be considered a "permitted" use, but rather a use by "special permit." This would allow a more thorough review by the town and the appropriate county agencies.

1.3 Since the subject parcel is located on a very busy County highway, we are concerned that the drive through lanes have sufficient stacking capacity so to ensure that vehicles do not queue into the County right-of-way. A minimum stacking length must be established to ensure that all vehicles can be contained on the site, without interfering with existing parking, driveways, and access corridors.

1.4 Lighting, landscaping, and signage details must be provided to ensure that all meet the goals and objectives of the hamlet zoning district.

1.5 A review of the zoning code amendments must be done by both the Rockland County Department of Highways and the New York State Department of Transportation. Any comments or concerns raised by either of those agencies must be addressed.

1.6 All proposed drive through window site plans must be reviewed by all State and/or County agencies which have review authority. This would include the New York State Department of Transportation, the Rockland County Department of Highways, Drainage Agency, and Division of Environmental Resources.

1.7 The Town board must determine if the additional traffic derived from this proposed use will result in the need for a traffic study of the Main Street corridor.

  
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Douglas J. Schuetz  
Acting Commissioner of Planning

cc: Supervisor George Hoehmann, Clarkstown  
Rockland County Department of Highways  
Rockland County Drainage Agency  
New York State Department of Transportation  
Rockland County Division of Environmental Resources  
Rockland County Department of General Services,  
Division of Facilities Management

Attention Pat McDonald, Town Attorney's Office  
Justin Sweet, Town Clerk  
Clarkstown Planning Board, Attention Joe Simoes

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*\*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.*

