

**DEPARTMENT OF PLANNING**

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

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

February 15, 2019

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

**Tax Data:** 57.20-1-49 58.17-1-46

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

**Map Date:** 12/21/2018

**Date Review Received:** 1/15/2019

**Item:** *BRIXMOR HOLDINGS 11 SPE, LLC (ROCKLAND PLAZA) (C-740J)*

Special permit and variances to permit the demolition of an existing 1,409 sq. ft. retail building, and construction of a 5,700 sq. ft. building that is planned to be used as a restaurant on a 22.4-acre site in the RS zoning district. A 1,204 sq. ft. outdoor seating area for the restaurant is also proposed. The existing one-way, diagonal parking aisles will be reconfigured so that they are 90 degree parking spaces with two-way aisles. In addition, an underground stormwater storage facility will be installed to compensate the loss of flood storage from the construction of the proposed building, and the deteriorated roof of the existing culvert for the Nauraushaun Brook, under the existing tuxedo building, will be replaced. Lastly, the southeastern access on Route 59 will be eliminated.

A special permit is required from the Zoning Board of Appeals for construction that occurs within designated areas on the Clarkstown Official Map, that are within a floodplain, swamp, drainage way or drainage easement. Only parking driveways, open recreation in landscaped areas, signs and fencing are permitted as special permit uses within a floodplain. The proposed building is located within the floodplain of the Nauraushaun Brook. Needed variances include: less than the required front yard for NYS Route 59 (for the outdoor seating area); no landscaped buffer along the front yards in the RS district where 15 feet is required; less than the required number of parking spaces; and no buffer for a special permit use, when 75 feet is required.

Northwest corner of NYS Route 59 and North Middletown Road

**Reason for Referral:**

NYS Route 59, North Middletown Road (CR 33), Nauraushaun Brook

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 A review must be completed by the New York State Department of Transportation, any comments or concerns addressed, and all required permits obtained.

**BRIXMOR HOLDINGS 11 SPE, LLC (ROCKLAND PLAZA) (C-740J)**

- 2 A review must be completed by the County of Rockland Drainage Agency, any comments or concerns addressed, and all required permits obtained.
- 3 The comments in the February 5, 2019 letter from the Rockland County Department of Health must be met.
- 4 The comments in the December 5, 2018 letter from the Rockland County Sewer District No. 1 must be met.
- 5 A review must be completed by the County of Rockland Department of Highways and any concerns addressed and all required permits obtained.
- 6 The site plan, Drawing No. C-201, notes that the two outdoor areas will be 560.2 sq. ft. and 665.6 sq. ft., for a total of 1,225.8 sq. ft., and Drawing No C-100 lists the outdoor seating to be 1,226 sq. ft. in the bulk table. The project narrative from Ira Emanuel and the Application form indicate that the outdoor seating area will be 1,204 sq. ft. All information must be consistent. The correct square footage for the outdoor seating area must be provided.
- 7 The bulk table on the site plan (Sheet C-100) lists the required number of parking spaces to be 1,579. The project narrative from Ira Emanuel indicates that a total of 1,454 parking spaces are required for the proposed uses. The bulk table indicates that 1,079 parking spaces are proposed, which includes 930 parking spaces, 24 ADA spaces, and the 125 commuter spaces. The narrative indicates that 948 parking spaces are proposed, with an additional 125 parking spaces for the commuters, for a total of 1,073 parking spaces. All information must be consistent. These discrepancies must be corrected. The number of parking spaces required must be verified and the total number of parking spaces being provided must determined to ensure that the parking variance sought reflects the accurate percentage of the extent of the proposed non-conformity.
- 8 Areas dedicated for snow removal must be clearly delineated on the site plan so that the plow drivers will know where to place the snow piles. Designating specific locations on the site for the snow piles, especially since less than the required number of parking spaces are being provided, will eliminate the loss of parking spaces meant for the patrons and employees of the restaurant and shopping center.
- 9 The variance for buffer (Note 28) indicates that a 15 foot landscaped buffer along the front yards in the RS zoning district be provided. It is indicated that one foot is proposed. However, this area is not landscaped, so therefore does not meet the criteria. Therefore, the requested buffer is greater than indicated and should be reflected as such in the narrative and bulk table.

  
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Douglas J. Schuetz  
Acting Commissioner of Planning

cc: Supervisor George Hoehmann, Clarkstown  
New York State Department of Transportation  
Rockland County Department of Highways  
Rockland County Drainage Agency  
Rockland County Department of Health  
Rockland County Sewer District #1  
  
McLaren Engineering Group  
Ira M. Emanuel, P.C.

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.*

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*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.*

