

DEPARTMENT OF PLANNING

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Douglas J. Schuetz
Acting Commissioner

Arlene R. Miller
Deputy Commissioner

August 21, 2019

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

Tax Data: 58.18-1-24

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

Map Date: 7/16/2019

Date Review Received: 8/6/2019

Item: *STARBUCKS COFFEE HOUSE (C-3641)*

Use variance to permit the construction of a 2,400 SF Starbucks Coffee House with drive-thru, as a retail use in the LIO zoning district, located on 0.53 acres. Variances for lot area, front yard, side yard, rear yard buffer, parking in front yard, dumpster in front yard, monument sign setback, sign area for wall signs, and vertical height of logo signs are also required. A variance for more than permitted monument signs may also be needed.

Northwest corner of West Nyack Road and NYS Route 304

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 that applicable zoning regulations and restrictions have caused unnecessary hardship in order for a use variance to be granted. To prove such unnecessary hardship the applicant shall 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.

The Town of Clarkstown Zoning Board of Appeals must assess whether all four of the above criteria have been met.

STARBUCKS COFFEE HOUSE (C-3641)

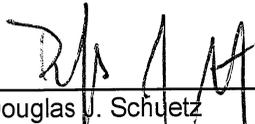
2 Multiple use variances have previously been granted in the LIO zoning district in this neighborhood. Because of this, the Zoning Board should suggest to the Town Board that a comprehensive study should be undertaken of the neighborhood to determine if it would be more appropriate to rezone some of 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 A review must be completed by the New York State Department of Transportation, and all required permits obtained.

4 The applicant must comply with the comments made by the Rockland County Department of Health, in reference to decommissioning the well on the parcel, in their letter of August 21, 2019.

5 A review must be completed by the County of Rockland Sewer District #1 and all required permits obtained.

6 The deeds for both parcels must be updated with the parking easement so as to assure future use of lot 58.18-26 for the parking needs of lot 58.18-1-24. The map must clearly delineate and note the area to be included in the easement. Currently, it appears the thick blue line on the site plan represents this. If that is the case, a note must be placed on the site plan, indicating such.



Douglas J. Schuetz
Acting Commissioner of Planning

cc: Supervisor George Hoehmann, Clarkstown
Rockland County Department of Health
Rockland County Sewer District #1
New York State Department of Transportation

Bart M. Rodi - Engineer
Hilton Displays

KD Equities, LLC

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.

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.