COUNTY OF ROCKLAND

DEPARTMENT OF PLANNING

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County Executive

THOMAS B. VANDERBEEK, P.E.
Acting Commissioner

ARLENE R. MILLER
Deputy Commissioner

January 23, 2014

Haverstraw Zoning Board of Appeals
One Rosman Road
Garnerville, NY 10923

Tax Data: 25.14-3-22

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

Map Date: 6/12/1984 **Date Review Received:** 1/9/2014

Item: ***40 THIELLS MOUNT IVY ROAD (H-20A)***

Use variance to permit a two-family residence in the R-15 zoning district on .61 acres.
West side of Thiells-Mt. Ivy Road; approximately 172 feet north of Richard Court

Reason for Referral:

Thiells-Mt. Ivy Road, Palisades Interstate Parkway, Long Path, Village of Pomona

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:

***Disapprove**

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.

Granting of the use variance would allow a greater density on the site than allowed and set a precedent for other residences to request similar uses, thereby changing the character of the neighborhood. Granting variances that would change the allowed density is equivalent to a zone change. It is our policy to disapprove zone change requests such as this without a comprehensive background study.

One of the responsibilities of the Zoning Board of Appeals when considering a variance

application is to judge whether the action violates the spirit and intent of the zoning ordinance. We emphasize density in our disapproval because we believe that the granting of this use variance would allow additional development on this lot that would challenge the intent of the R-15 zoning in this area. The applicant has not demonstrated that an unnecessary hardship exists or that all of the above criteria have been met. The use variance shall not be granted.

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

cc: Supervisor Howard Phillips, Haverstraw
Rockland County Department of Highways
Rockland County Department of Health
Palisades Interstate Park Commission
New York - New Jersey Trail Conference
Craig Aronson
Village of Pomona

Rockland County Planning Board Members

**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.