

DEPARTMENT OF PLANNING

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Douglas J. Schuetz
Acting Commissioner

Arlene R. Miller
Deputy Commissioner

August 10, 2017

Haverstraw Town Board
One Rosman Road
Garnerville, NY 10923

Tax Data: 25.14-3-34

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

Map Date:

Date Review Received: 7/13/2017

Item: *WW BEST, LLC (H-84D)*

Zone change of a 1.24 acre parcel from the R-15 zoning district to the C zoning district. An existing professional office building is located on the site. A use variance was granted in 1982 to permit the office building in the R-15 zoning district.

West side of Thiells Mt. Ivy Road, approximately 130 feet south of Country Club Lane

Reason for Referral:

Thiells Mt. Ivy Road (CR 47), 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***

The applicant has indicated that this parcel was granted a use variance in 1982 to permit the construction of the existing professional office building on the site, which is located in the R-15 zoning district. While the parcel is located directly north of the existing C zoning district boundary, and an extension of the zone to include this parcel might seem appropriate, the C zoning district does not permit professional office uses, either by right or as a special permit of the Zoning Board of Appeals or Town Board. Therefore, the rezoning would result in the use being a non-conforming use, and would again require a use variance in order to permit the existing use, which is allowed in other zoning districts. In order to grant a use variance, an applicant must demonstrate that all four of the following criteria have been met: A use variance should only be allowed if the applicant can show that he meets all four of the following conditions:

1. The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
2. The alleged hardship is unique and does not apply to a substantial portion of the district or neighborhood;
3. The requested variance will not alter the essential character of the neighborhood; and

WW BEST, LLC (H-84D)

4. The alleged hardship is not self-created.

As indicated above, one of the criteria that must be demonstrated is that the alleged hardship is not self-created; a criteria that would be difficult to argue given the zone change application. Given the implications of changing the zoning district, the existing use variance should stand in the R-15 zoning district, and the zone change must not be permitted.

Listed below are additional comments that the board must address.

1 A review must be completed by the County of Rockland Department of Highways and any concerns addressed and required permits obtained.

2 The Village of Pomona is one of the reasons this proposal was referred to this department for review. The municipal boundary is along the western boundary of the Palisades Interstate Parkway, approximately 400 feet from the subject property line. As required under Section 239nn of the State General Municipal Law, the Village of Pomona must be given the opportunity to review the proposed zone change and provide any concerns related to the project to the Town of Haverstraw.

3 A review must be completed by the Palisades Interstate Park Commission and any comments or concerns addressed.



Douglas J. Schuetz
Acting Commissioner of Planning

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

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.

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.