

## DEPARTMENT OF PLANNING

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

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

June 19, 2017

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

**Tax Data:** 20.20-4-7

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

**Map Date:** 4/4/2017

**Date Review Received:** 5/23/2017

**Item:** *PAUL WELSH (H-256)*

Use variance to legalize an existing single-family dwelling located on .3085 acres in the PIO zoning district. The residence has been in existence since 1964. An audit of the Town's records brought the non-conformity to the Town's attention.

West side of Beach Road, just north of the Village of West Haverstraw boundary; north side of Ecology Lane

### **Reason for Referral:**

Beach Road (CR 108), Minisceongo Creek, Haverstraw Bay Park, Village of West Haverstraw

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.

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The applicant must demonstrate that all of the above criteria have been met.

2 The Village of West Haverstraw is one of the reasons this proposal was referred to this department for review. The municipal boundary is along the southern property line of the site, directly adjacent to Ecology Lane. As required under Section 239nn of the State General Municipal Law, the Village of West Haverstraw must be given the opportunity to review the proposed use variance and provide any concerns related to the project to the Town of Haverstraw.

3 A review must be completed by the Rockland County Drainage Agency, and all required permits obtained.

4 A review must be completed by the County of Rockland Division of Environmental Resources and any comments addressed.

5 The site plan for the property indicates that the 100-year flood elevation is 7 feet, and illustrates the topography for the site to be no more than 6 feet. In addition, the entire site is located within the floodplain of the Minisceongo Creek. The Floodplain Administrator for the Town of Haverstraw shall certify that the building is in compliance with the floodplain regulations of the Town and the Federal Emergency Management Agency.

6 The property contains a trailer on site. It is not clear if this is a residence, business, or used for some other purpose. The Town of Haverstraw must determine if the additional trailer use is permitted on the same parcel.

7 The existing driveway at the north western corner of the lot appears to encroach onto the adjacent parcel to the north. The driveway should be relocated so that it is located completely on the parcel, or an access/parking easement must be obtained from tax lot 20.20-4-8.

8 A vicinity map, that contains a north arrow and scale, must be provided on the site plan.

  
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Douglas J. Schuetz  
Acting Commissioner of Planning

cc: Supervisor Howard Phillips, Haverstraw  
Rockland County Department of Highways  
Rockland County Department of Health  
Rockland County Drainage Agency  
Rockland County Division of Environmental Resources

Anthony R. Celentano P.L.S.  
Village of West Haverstraw

*\*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.*

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*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.*

