

DEPARTMENT OF PLANNING

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Douglas J. Schuetz
Acting Commissioner

Arlene Miller
Deputy Commissioner

April 10, 2020

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

Tax Data: 26.13-1-7

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

Map Date:

Date Review Received: 2/27/2020

Item: *MARSA CARGO EXPRESS - 86 WEST RAMAPO ROAD (H-266)*

A special permit application to allow a home office, shipping company, and storage of commercial vehicles on the premises as a home occupation on 0.31 acres in the R-15 zoning district
The western side of West Ramapo Road, approximately 140 feet south of Sherman Drive

Reason for Referral:

High Tor State Park, West Ramapo Road (US Route 202)

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 The proposed business does not meet the criteria for a home occupation. The February 27, 2020 letter from the Town of Haverstraw Building Department describes the business as a "Cargo Delivery Business." The application review form states the proposed business as a "home office, shipping company and storage of commercial vehicles." Town regulations define a home occupation as "of a service character customarily conducted entirely within a dwelling", not having "any exterior evidence of such secondary use", and not involving "the keeping of a stock-in-trade." The special permit requirements for home occupations in section 167-26.C states "The home occupation shall not increase the vehicular traffic flow by more than one additional vehicle at a time and shall not involve the use of outdoor storage of commercial vehicles for delivery of materials to and from the premises." A site visit conducted on March 13, 2020 confirmed that two delivery vehicles were stored on-site. The proposed business fails to meet the requirements of a home occupation, specifically: it is conducted outside the dwelling; there is exterior evidence of the use; stock-in-trade is kept on-site; traffic is increased by more than one additional vehicle, and commercial vehicles are stored outdoors.

The requirements and criteria for a home occupation are designed to allow commercial activities within the home that are compatible with residential use. A cargo or shipping company is incompatible with the surrounding residential neighborhood. To allow such a use requires a use variance. 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

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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 applicant has not demonstrated that an unnecessary hardship exists and is not eligible for a use variance. The special permit must be denied.

2 The applicant has not submitted any plans or details regarding the proposed business that are necessary to determine compliance with the Town's requirements for home occupations. It cannot be determined from the material provided what the total floor area of the proposed use will be, if any non-residents are employed, and if the required number of parking spaces (two for the residence plus two for the home occupation for a total of four) are provided. Without this information, the Town cannot approve the special permit application.

The following comments address our additional concerns about this proposal.

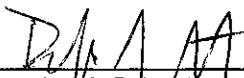
3 A review shall be completed by the New York State Department of Transportation and any concerns addressed and any required permits obtained.

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

5 The February 27, 2020 letter from the Town of Haverstraw Building Inspector cites the incorrect section of the zoning ordinance. Section 167-23 refers to animal hospitals; Section 167-26 is the correct section for home occupations. The public hearing notice must be reviewed and, if it contains inaccurate information, re-issued.

6 Pursuant to General Municipal Law (GML) Section 239-m and 239-n, if any of the conditions of this GML review are overridden by the board, then the local land use board must file a report with the County Commissioner of Planning of the final action taken. If the final action is contrary to the recommendation of the Commissioner, the local land use board must state the reasons for such action.

7 In addition, pursuant to Executive Order 01-2017 signed by County Executive Day on May 22, 2017, County departments are prohibited from issuing a County permit, license, or approval until the report is filed with the County Commissioner of Planning. The applicant must provide to any County agency which has jurisdiction of the project: 1) a copy of the Commissioner report approving the proposed action; or 2) a copy of the Commissioner of Planning recommendations to modify or disapprove the proposed action, and a certified copy of the land use board statement overriding the recommendations to modify or disapprove, and the stated reasons for the land use board's override.



Douglas J. Schuetz
Acting Commissioner of Planning

cc: Supervisor Howard Phillips, Haverstraw
New York State Department of Transportation
Palisades Interstate Park Commission

Rockland County Planning Board Members

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**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.