

**DEPARTMENT OF PLANNING**

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

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

August 20, 2020

Hillburn Zoning Board of Appeals  
31 Mountain Avenue  
Hillburn, NY 10931

**Tax Data:** 47.14-1-7.-50

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

**Map Date:**

**Date Review Received:** 7/27/2020

**Item:** *NISHA REALTY, LLC. (Hi-15D)*

Use variance or interpretation of the Zoning Law to allow a unit in a commercial condominium building to be used for automotive repairs. The property was rezoned from Highway Commercial to Local Shopping in January of 2020.

West side of Route 17, approximately 1,200 feet north of Sixth Street, and at the terminus of Boulder Avenue

**Reason for Referral:**

NYS Route 17

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 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 applicant has not demonstrated that an unnecessary hardship exists. The use variance shall not be granted.

**NISHA REALTY, LLC. (HI-15D)**

2 While the applicant has not submitted financial evidence to document that an unnecessary hardship exists, historical evidence that the premises were previously used for automotive repair is provided, as well as current proof that other units are used for the same purpose. In addition, it is noted that the property cannot meet the LS standards given the size of the parcel and the existing building. However, the Village rezoned the property from Highway Commercial to Local Shopping after undertaking a thorough analysis of the area during the Comprehensive Plan process. The proximity of the adjacent residential neighborhood was the primary consideration for limiting the permitted uses. Pre-existing uses that become non-conforming because of a rezoning are protected if the use continues. The automotive repair use was discontinued in this unit approximately two years ago. As such, it is no longer protected. The applicant must submit evidence of the inability to rent the premises for a use permitted in the LS zoning district.

3 A site plan or survey of the whole property must be submitted for our review so we can consider the use variance request in the context of the entire parcel and the surrounding properties, as well as the state highway.

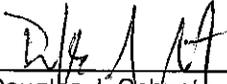
The following comments address our additional concerns about the proposal.

4 A review must be completed by the New York State Department of Transportation, any comments or concerns addressed, and all required permits obtained.

5 A review must be completed by the Rockland County Department of Health to ensure compliance with Article XIX (Mosquito Control) of the Rockland County Sanitary Code.

6 The partial plan submitted with the ZBA application highlights the southeast corner unit as the subject site. This is Lot 47.14-1-7.-90 not .-50 according to tax parcel data available to this department. Lot 47.14-1-7.-50 is the center unit on the south side of the building. Clarification must be provided as to the tax lot designation and the unit location.

7 The applicant must use the EAF Mapper Application available on the NYS DEC website (<https://gisservices.dec.ny.gov/eafmapper/>) to complete the Short Environmental Assessment Form (SEAF). This tool self populates the form with answers available through various NYS databases. The SEAF submitted with the application contains incorrect and incomplete answers. Question 12b must be answered. Question 13a must be answered affirmatively and an answer must be provided for Question 13b. Question 15 must be answered affirmatively as the Northern Long-eared Bat and Timber Rattlesnake are endangered species in the area.

  
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Douglas J. Schuetz  
Acting Commissioner of Planning

cc: Mayor Joseph Tursi, Hillburn  
New York State Department of Transportation  
Rockland County Department of Health

Daniel Harpaz

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.*

**NISHA REALTY, LLC. (Hi-15D)**

*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.*