



COUNTY OF ROCKLAND
DEPARTMENT OF PLANNING

Building T
Pomona, NY 10970
(845) 364-3434
Fax. (845) 364-3435

C. SCOTT VANDERHOEF
County Executive

THOMAS B. VANDERBEEK, P.E.
Commissioner

January 6, 2014

ARLENE R. MILLER
Deputy Commissioner

New Hempstead Zoning Board of Appeals
108 Old Schoolhouse Road
New City, NY 10956

Tax Data: 42.18-2-31

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

Map Date:

Date Review Received: 12/9/2013

Item: *JOSEPH GREENBAUM (NH-39B)*

Interpretation of a decision of the Building Inspector or a use variance to allow the continued maintenance and use of an accessory apartment in a single-family residence on .5733 acres in a 1R-25 zoning district. An outside shed is being used as a taxi dispatch center.
Southwest corner of Greenridge Way and North Main Street (Route 45)

Reason for Referral:

NYS Route 45, Village of New Square

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***

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:

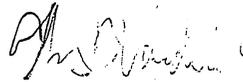
- A. The applicant cannot realize a reasonable return, provided the lack of return is substantial as shown by competent financial evidence.
- B. The alleged hardship is unique and does not apply to a substantial portion of the district or neighborhood.
- C. The requested variance will not alter the essential character of the neighborhood.
- D. The alleged hardship is not self-created.

Allowing a two-family residence in the 1R-25 zoning district can set a precedent, and change the character of the neighborhood if other property owners also request a similar use variance. The more intensified use can also have a negative impact on the State highway if additional curb cuts are required, and the number of vehicles entering/exiting the site increase. One two-family residence will not have an impact on the surrounding neighborhood, traffic, etc., but if other

JOSEPH GREENBAUM (NH-39B)

nearby owners also request a similar exemption, thereby setting a precedent, the intent of the zoning district can be undermined, and the increase in usage may affect the State highway. The applicant must demonstrate that all of the four criteria above have been met.

The taxi dispatch center operating in the backyard shed is not a permitted use either in the 1R-25 zoning district. This use cannot be considered a home occupation because it is not being conducted within the residential unit. The fact that electric and phone lines are being run from the residence to the shed raises safety issues. We believe that this arrangement is in violation of the requirements of the New York State Uniform Fire Prevention and Building Code. The taxi dispatch use must be discontinued.



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

cc: Mayor Larry Dessau, New Hempstead
New York State Department of Transportation
Village of New Square
New York State Department of State,
Division of Code Enforcement and Administration
John Greenbaum

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.