

**DEPARTMENT OF PLANNING**

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

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

November 28, 2018

New Square Zoning Board of Appeals  
37 Reagan Road  
New Square, NY 10977

**Tax Data:** 42.19-1-77.1

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

**Map Date:** 12/1/2016

**Date Review Received:** 10/26/2018

**Item:** 31-33 BUSH LANE - KITCHEN (NS-31)

Application to permit a commercial kitchen in the LDR zoning district in an existing two-family dwelling that is located on .198 acres. A commercial kitchen is not a permitted use or accessory use in the LDR zoning district.

Southeast corner of Reagan Road and Bush Lane

**Reason for Referral:**

Town of Ramapo

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 paperwork submitted with the application indicates that a conditional use from the Zoning Board of Appeals is being sought for the proposed commercial kitchen use. However, this use is not a permitted use, conditional use, or an accessory use. To permit this use, a use variance is required to permit the proposed use. The application form must be revised to indicate the proper action needed to permit the proposed use. The public hearing notice will have to be re-issued as well with the correct information.

### **31-33 BUSH LANE - KITCHEN (NS-31)**

2 This department is not 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. In order to prove such unnecessary hardship the applicant shall demonstrate to the zoning 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.

Allowing a commercial use of any type in the LDR zoning district can set a precedent, and change the character of the neighborhood if other property owners also requested a similar use variance. The more intensified use can also have a negative impact on the surrounding neighborhood, infrastructure, and local traffic (deliveries of supplies, delivery of food, etc.). In addition, permitting the use will undermine the intent of the zoning district. The applicant must demonstrate that all of the four criteria above have been met.

3 Details regarding the operation of the commercial kitchen have not been provided to properly determine the impact to the surrounding community. Hours of operation, number of deliveries expected, location for truck deliveries to be unloaded, number of outside employees (if any), frequency of food delivery to outside, etc. Details must be provided so that the Village can do a proper evaluation of the proposed use variance.

The following additional comments address other concerns or issues that must be addressed:

4 A review must be completed by the Rockland County Health Department and all necessary approvals obtained.

5 A review must be completed by the County of Rockland Sewer District #1, any comments or concerns addressed, and all required permits obtained.

6 The Town of Ramapo is the reason this proposal was referred to this department for review. The municipal boundary is approximately 445 feet northeast of the subject site. As required under Section 239nn of the State General Municipal Law, the Town of Ramapo must be given the opportunity to review the proposed use variance and provide any concerns related to the project to the Village of New Square.

7 The application form lists United Water as the water district. This must be corrected to Suez.

8 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.

9 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.

**31-33 BUSH LANE - KITCHEN (NS-31)**

  
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Douglas J. Schuetz  
Acting Commissioner of Planning

cc: Mayor Israel Spitzer, New Square  
Rockland County Sewer District #1  
Rockland County Department of Health  
  
Atzl, Nasher & Zigler P.C.  
Town of Ramapo  
Nochum Goldmunzer - Blueline USA Inc.

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.*

