COUNTY OF ROCKLAND

DEPARTMENT OF PLANNING

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January 28, 2015

Nyack Planning Board
9 North Broadway
Nyack, NY 10960

Tax Data: 66.45-1-9

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

Map Date: 12/15/1980 **Date Review Received:** 1/2/2015

Item: ***RICHARD MODAFERRI - 63 WASHINGTON STREET (N-168)***

Site plan for the proposed conversion of a two-family house to a three-family house for an existing dwelling on .11 acres in the Two-Family Residence (TFR) zoning district. Two dormers are proposed to be added to raise the roof.

East side of Washington Street, approximately 162 feet north of Cedar Hill Road

Reason for Referral:

Village of South Nyack

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 The Village of South Nyack is the reason this proposal was referred to this department for review. The municipal boundary is approximately 162 feet south of the subject property line. As required under Section 239nn of the State General Municipal Law, the Village of South Nyack must be given the opportunity to review the proposed site plan and provide any concerns related to the project to the Village of Nyack.

RICHARD MODAFERRI - 63 WASHINGTON STREET (N-168)

2 A use variance is required in order to allow the two-family residence to be converted to a three-family residence. 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. In order 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.

Allowing a three-family residence in the TFR 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 and adjacent municipality. One three-family residence will not have an impact on the surrounding neighborhood, traffic, etc., but if other 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 community character of the neighborhood. Other The applicant must demonstrate that all of the four criteria above have been met.

3 The site plan submitted with this review shows a driveway that seems to be only able to accommodate a single vehicle. The parking requirements indicate that 1.0 parking space is required per each unit, or 2.0 parking spaces per 1 or greater bedrooms. As a minimum, three parking spaces are required for the proposed three-family dwelling. All required parking spaces must be provided.

Douglas J. Schuetz
Acting Commissioner of Planning

cc: Mayor Jen White, Nyack

Village of South Nyack

Jerry Fioriti

**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.