

DEPARTMENT OF PLANNING

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Douglas J. Schuetz
Acting Commissioner

Arlene R. Miller
Deputy Commissioner

April 26, 2016

Nyack Zoning Board of Appeals
9 North Broadway
Nyack, NY 10960

Tax Data: 66.37-3-21

Re: GENERAL MUNICIPAL LAW REVIEW: Section 239 L and M
Map Date: 11/19/2015

Date Review Received: 3/31/2016

Item: *20 PROSPECT STREET (N-178)*

Use variance to re-instate a pre-existing, four-family use for a parcel located on .25 acres in the TFR zoning district. The prior four-family dwelling was damaged by a fire, and lost its non-conforming status since it had been discontinued for over one year.
Northwest corner of Prospect Street and Hudson Avenue

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 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 four-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 applicant must demonstrate that all of the four criteria above have been met.

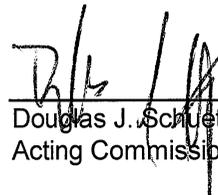
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2 The bulk table footnote lists that "****" indicate that a variance is required; however there are no notations in the table with the ** symbol. It must be indicated what bulk standard requires a variance. If no variance is required, then this notation should be removed from the map.

3 Six parking spaces are proposed on the plan. In addition, an approximate boundary of an asphalt drive is drawn. It is not clear if this asphalt drive is to remain, especially the portion that wraps around the structure. A reference to Map Note 8 is provided on the plans, but no notes exist. It must be clarified if a portion or all of the asphalt drive is to remain. In addition, map notes must be provided for the plans, particularly since one is being referenced.

4 The Village of South Nyack is the reason this proposal was referred to this department for review. The municipal boundary is approximately 325 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 use variance and provide any concerns related to the project to the Village of Nyack.

5 The site plan lists the tax map # as 66.37-2-21. This is incorrect, and must be corrected to be 66.37-3-21.



Douglas J. Schuetz
Acting Commissioner of Planning

cc: Mayor Jen White, Nyack

Kier B. Levesque, RA
Village of South Nyack

**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.