Rockland County

Ed Day, Rockland County Executive

DEPARTMENT OF PLANNING
Dr. Robert L. Yeager Health Center
50 Sanatorium Road, Building T
Pomona, New York 10970
Phone: (845) 364-3434 Fax: (845) 364-3435

Douglas J. Schuetz
Acting Commissioner

Arlene R. Miller
Deputy Commissioner

November 19, 2018

Nyack Planning Board
9 North Broadway
Nyack, NY 10960

Tax Data: 60.77-2-61

Re: GENERAL MUNICIPAL LAW REVIEW: Section 239 L and M
Map Date: 5/31/2016 **Date Review Received:** 10/25/2018

Item: ***245 NORTH MIDLAND AVENUE - TONG RENOVATION (N-177B)***

Site plan for the proposed change of use from one non-conforming use (workshop and offices) to another less intense non-conforming use (multi-family - five apartments) for an existing building located in the TFR zoning district on .15 acres. The previous approvals granted in 2016 have expired, so need to be reaffirmed.

Northeast corner of Sixth Avenue and N. Midland Avenue

Reason for Referral:

Village of Upper 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 TFR zoning district does not permit multifamily dwelling units. Is a use variance required in order to achieve the proposed nonconforming use? If a use variance is required, then the 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.

It must be clarified if a use variance is the correct action to undertake in order to permit the proposed nonconforming use.

245 NORTH MIDLAND AVENUE - TONG RENOVATION (N-177B)

Douglas J. Schuetz
Acting Commissioner of Planning

cc: Mayor Donald N. Hammond, Nyack

Jay A. Greenwell, PLS, LLC
Village of Upper 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.