



COUNTY OF ROCKLAND
DEPARTMENT OF PLANNING

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County Executive

THOMAS B. VANDERBEEK, P.E.
Commissioner

April 25, 2014

ARLENE R. MILLER
Deputy Commissioner

Orangetown Zoning Board of Appeals
21 Greenbush Road
Orangeburg, NY 10962

Tax Data: 78.18-1-56

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

Map Date: 2/20/2014

Date Review Received: 3/27/2014

Item: *PRUSINOWSKI BARN (O-2243)*

Variations to allow the conversion of an existing barn to living quarters in the R-40 zoning district on .33 acres. Variations required include: 1) Definition of Accessory Guest House; 2) Square footage of the accessory use is greater than permitted (in the R-80 zoning district); 3) Structure does not comply with condition that there be "no exterior change and no new structures built on the property within the past ten years so as to create an additional dwelling unit;" 4) Greater than permitted floor area ratio; 5) Less than the required lot area; 6) Less than the required lot width; 7) Less than the required street frontage; 8) Less than the required front yard; 9) Less than the required side yard; 10) Less than the required total side yards; 11) Less than the required rear yard; and 12) Greater than permitted building height for an accessory structure.

North side of Closter Road, approximately 360 feet west of US Route 9W

Reason for Referral:

Closter Road (CR 4), US Route 9W

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 A review must be completed by the County of Rockland Department of Highways and all required permits obtained.

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2 The application before the Zoning Board of Appeals is to allow the conversion of a barn to living quarters, a use not permitted in the R-40 zoning district. This is noted in the first reason for denial by the Town of Orangetown, and should in fact, be considered a use variance. 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 that applicable zoning regulations and restrictions have caused 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.

To further exacerbate the non-compliance, the R-40 zoned parcel is only 36% of the size that it should be for the district requirement. Allowing two dwelling units on an undersized parcel that has the lot area more comparable to the R-15 zoning district can certainly set a precedent for other residents within the various residential zoning districts to request similar exemptions, thereby undermining the intent of the zoning ordinance.

The applicant must prove that all of the criteria listed above demonstrate that an unnecessary hardship exists; otherwise, the use variance shall not be granted.

3 The materials submitted with this application indicate that a variance is required from Section 4.52 because significant exterior changes are being proposed and/or a new structure is being built on the property within the past ten years so as to create an additional dwelling unit. Non-compliance with this section of the law would also indicate that a use variance is required to allow the conversion of the barn, because in order to do so, a second story addition is being proposed, which would change the exterior of the existing building. Again, all four of the criteria cited above would have to be met.

4 It is not clear why the application materials submitted reference Section 3.11, Column 2, #7, as this requirement is for the R-80 zoning district only. This must be clarified.

5 If the Town believes that the proposal should be considered an "accessory apartment" then all of the requirements for a single-family conversion must be met. If these conditions are all met, then upon transfer of ownership of the property, the additional conversion must cease to operate.



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

cc: Supervisor Andrew Stewart, Orangetown
Rockland County Department of Highways
New York State Department of Transportation
Robert Hoene, Architect

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**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.

