



# Rockland County

Ed Day, Rockland County Executive

## DEPARTMENT OF PLANNING

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

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

November 1, 2017

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

**Tax Data:** 72.08-3-47

**Re: GENERAL MUNICIPAL LAW REVIEW:** Section 239 L and M  
**Map Date:** 6/29/1994

**Date Review Received:** 9/27/2017

**Item:** *LIN HU - USE VARIANCE FOR HOME OCCUPATION (O-1308H)*

A use variance application to allow the temporary boarding of students in relation to a home tutoring occupation, located on 0.44 acres in the R-15 zoning district.  
The eastern side of Kerry Court, approximately 180 feet south of Gilbert Avenue.

### Reason for Referral:

Gilbert Avenue (CR 20)

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***

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. 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.

The applicant has not demonstrated that an unnecessary hardship exists. The use variance shall not be granted.

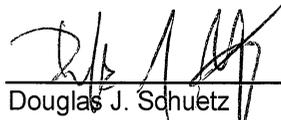
The following comments address our additional concerns:

**LIN HU - USE VARIANCE FOR HOME OCCUPATION (O-1308H)**

1 Without an established parking regulation for the proposed use, the Zoning Board must make a determination what the required parking will be, if the use is permitted. In addition to the standard requirements of a single-family residence and a home occupation, the Board must determine if additional parking should be required to accommodate the temporary boarders. Whether or not students will drive themselves to the property will have a significant impact on what the appropriate requirement will be. Once a parking requirement is established, the applicant must demonstrate that they can provide adequate parking on site.

2 In their October 13, 2017 letter, the Rockland County Highway Department notes that they pose no objection to the proposed use variance as long as the Town finds the on site parking for the use is adequate. If, after the Board makes the determination discussed in the comment above, the applicant is unable to provide the necessary parking to the Board's satisfaction, an updated review by the Rockland County Highway Department must be obtained.

3 As per the October 3, 2017 letter from the Rockland County Department of Health, the applicant must obtain a Temporary Residence permit from them if more than 10 students are staying on site at one time.



Douglas J. Schuetz  
Acting Commissioner of Planning

cc: Supervisor Andrew Stewart, Orangetown  
Rockland County Department of Highways  
Rockland County Department of Health

Lin Hu

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.*