

**DEPARTMENT OF PLANNING**

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

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

October 12, 2016

Ramapo Zoning Board of Appeals  
237 Route 59  
Suffern, NY 10901

**Tax Data:** 33.15-1-28

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

**Map Date:** 2/3/2016

**Date Review Received:** 8/31/2016

**Item:** *NINE HUNDRED SEVENTY ONE RT 45 HOLDINGS, LLC (R-899A)*

Use variance to allow a retail use in the LO zoning district. A two-story, 5,300 SF addition to an existing office building is proposed. The first floor will contain retail storage space; the retail use will be located on the second floor. The net lot area of the site is 3.14 acres. The CS zoning district bulk requirements are proposed. Variances for front yard, parking and building height will be required from the CS bulk standards.

North side of Pomona Road, east side of Firemens Memorial Drive and west side of Route 45

**Reason for Referral:**

Pomona Road (CR 86), Firemens Memorial Drive (CR 49), NYS Route 45, Palisades Interstate Parkway, Village of New Hempstead

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.

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The applicant has not demonstrated that an unnecessary hardship exists. The financial evidence submitted relates to the existing use. There is no analysis of the feasibility of other uses permitted in the LO zoning district. The applicant's attorney discusses the possibility of a religious or educational use in the existing building in his June 7, 2016 letter. Our reading of the Zoning Law does not indicate that religious uses are permitted in the LO zone. Schools of special instruction are a special permit use. The use variance shall not be granted.

The following comments address our additional concerns about this proposal.

- 1 A review must be completed by the County of Rockland Department of Highways, all comments or concerns addressed, and all required permits obtained.
- 2 A review shall be completed by the New York State Department of Transportation, any concerns addressed, and all required permits obtained.
- 3 A review must be completed by the Palisades Interstate Park Commission and their comments or concerns addressed.
- 4 The Village of New Hempstead is one of the reasons this proposal was referred to this department for review. The municipal boundary is along the Pomona Road, approximately 50 feet south of the site. New York State General Municipal Law states that the purposes of Sections 239-l, 239-m and 239-n shall be to bring pertinent inter-community and countywide planning, zoning, site plan and subdivision considerations to the attention of neighboring municipalities and agencies having jurisdiction. Such review may include inter-community and county-wide considerations in respect to the compatibility of various land uses with one another; traffic generating characteristics of various land uses in relation to the effect of such traffic on other land uses and to the adequacy of existing and proposed thoroughfare facilities; and the protection of community character as regards predominant land uses, population density, and the relation between residential and nonresidential areas. In addition, Section 239-nn was enacted to encourage the coordination of land use development and regulation among adjacent municipalities, and as a result development occurs in a manner that is supportive of the goals and objectives of the general area.

The Village of New Hempstead has been given the opportunity to review the proposal and its impact on community character, traffic, water quantity and quality, drainage, stormwater runoff and sanitary sewer service. The areas of countywide concern noted above that directly impact the Village of New Hempstead must be considered and satisfactorily addressed, as well as the comments and concerns raised in their Planning Consultant's letter of September 19, 2016.

- 5 A review must be done by the Rockland County Department of Health to ensure compliance with Article XIX (Mosquito Control) of the Rockland County Sanitary Code.
- 6 A review must be completed by the County of Rockland Sewer District #1 and all required permits obtained.

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7 Permitting development that does not comply with the applicable bulk standards can set an undesirable land use precedent and result in the overutilization of individual sites. The applicant is seeking an 87 percent reduction in the required on-site parking for a site with frontage on two county roads, as well as a state highway. The ability of the existing infrastructure to accommodate non-conforming commercial facilities is a countywide concern and must be evaluated. This evaluation must consider whether local roads will become more congested and the sewer system, stormwater management systems and the public water supply will be overburdened. The Town must consider the cumulative and regional impacts of permitting such development. The additional retail space shall not be allowed.

8 The NYS Department of State has determined that the Town is not administering or enforcing the State Uniform Fire Prevention and Building Code in accordance with minimum standards set forth in 19 NYCRR part 1203. Given the concerns about the Town's administration and enforcement of the State Uniform Fire Prevention and Building Code raised in the Executive Deputy Secretary of State's letter of July 15, 2016, the proposed residential building must be held to the requisite minimum standards and comply with all requirements of this code.

9 As indicated in the July 11, 2016 denial letter from the Town of Ramapo Building, Planning & Zoning Department, the Fire Inspector raises several concerns that must be addressed. These include:

- 1) sprinklers are required for the new retail and storage space, and must comply with NFPA 13R;
- 2) fire alarm devices must be connected to the existing system;
- 3) fire department connections must be mounted on the street side of the building;
- 4) details must be provided about the storage space;
- 5) the type of retail use must be specified; and
- 6) a use variance is required for the retail use.

10 A review must be completed by the Rockland County Office of Fire and Emergency Services or the Hillcrest Fire Department to ensure that there is sufficient maneuverability on site for fire trucks, in the event an emergency arises.

11 Nine new parking spaces are proposed immediately adjacent to the southern property line and facing the County highway. This configuration does not allow for landscaping between the parking spaces and Pomona Road to prevent headlight glare from shining into vehicles traveling along the county road. These parking spaces must be relocated.

12 It is unclear why this proposal was not first submitted to the Planning Board for review and referral to the Zoning Board of Appeals. This must be clarified.

13 A traffic study must be undertaken to evaluate the impact of this more intensified land use on county and local roads, and to determine the peak traffic generation hours, capacity issues, turning movements, etc. in the vicinity.

14 Use variances are not an appropriate land use planning tool, especially since there are many other medical offices located within the NYS Route 45 corridor. If the Town is in favor of allowing additional uses in the LO zoning district, they must undertake a comprehensive analysis of the surrounding area to determine if this use is appropriate, or if there are other uses more compatible with the surrounding neighborhood. The analysis must consider community character, traffic generation, infrastructure capacity, as well as land use precedent.

15 Map Note 7 must be corrected to reference Section 239L and M of the General Municipal Law as this is not a subdivision application.

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16 The vicinity map must include a scale and a north arrow.

  
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Douglas J. Schuetz  
Acting Commissioner of Planning

cc: Supervisor Christopher St. Lawrence, Ramapo  
Rockland County Department of Highways  
New York State Department of Transportation  
Palisades Interstate Park Commission  
Rockland County Department of Health  
Rockland County Sewer District #1  
New York State Department of State  
Rockland County Office of Fire and Emergency Services  
Hillcrest Fire District  
  
Civil Tec Engineering & Surveying PC  
Village of New Hempstead

Nine Hundred Seventy One Rt. 45 Holdings, LLC

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.*