

**DEPARTMENT OF PLANNING**

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

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

June 18, 2019

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

**Tax Data:** 41.20-2-40

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

**Map Date:** 7/15/2017

**Date Review Received:** 4/30/2019

**Item:** *MOSDOS CHOFETZ CHAIM (R-2048D)*

Use variance to allow an existing religious educational and residential campus to continue to operate without the Adult Student Housing (ASH) special use permit restrictions which currently apply. The 4.64-acre site is located in an R-25 zoning district. The approved ASH development consists of 60 residential units in 12 structures, and a yeshiva building.

South side of Grandview Avenue, opposite Baldwin Court

**Reason for Referral:**

Grandview Avenue (CR 80), New Hempstead, Wesley Hills

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***

1 This department issued four GML reviews for the adult student housing development between July 2003 and November 2004. We recommended disapproval of the proposal in each review. We considered the proposed use to be incompatible with the surrounding low density residential uses, and the community character of the adjacent municipalities. The fact that the development did not conform to all of the special permit standards or the required bulk variances was also a concern. The applicant is now seeking a use variance to eliminate the special permit standards required for Adult Student Housing (ASH). An applicable use category is not specified in the application materials. Without the ASH designation, the existing development is a multi-family housing project. There will be no restrictions in place to protect the single-family property owners in the adjacent municipalities. While the applicant states that the existing religious educational campus use will continue, there is no enforcement mechanism proposed to ensure that it will continue to operate as such. Multi-family housing is not a permitted use in the R-25 zoning district. The applicant is not seeking a use variance to permit multi-family housing. However, if the ASH restrictions are lifted, the land use designation for this property will be multi-family residential. The use variance must not be granted.

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2 The applicant is claiming financial hardship because it is unable to refinance its debt on the property. According to the Mosdos Chofetz Chaim Inc., financial institutions are unwilling to lend the required funds due to the ASH special permit standards outlined in Section 376-1215. The application materials include one denial letter from FM Home Loans. Additional evidence of a financial hardship must be provided demonstrating that a reasonable return cannot be realized. One denial letter is not sufficient evidence of unnecessary hardship. It is unclear if the existing ASH development generates income for the applicant. This must also be clarified. We do not believe that the inability to obtain financing for existing debt meets the required standard for granting a use variance.

3 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.

As noted above, the applicant has not demonstrated that an unnecessary hardship exists. No financial evidence has been submitted indicating that the applicant cannot realize a reasonable return, or whether the ASH development generates sufficient income to meet its operating expenses. The single denial letter addresses refinancing only. This department has repeatedly stated that this ASH development is inconsistent with the essential character of the neighborhood. We believe the alleged hardship is self-created. The applicant pursued approval of a religious educational and residential development at this site despite the fact that it was not a permitted use. Once the ASH was added as special permit use, the applicant pursued that designation for a non-conforming proposal. The applicant fails to meet the criteria for granting a use variance; the application must be denied.

4 The law firm of Zarin & Steinmetz has submitted comments on behalf of the adjacent Village of Wesley Hills in a letter dated June 17, 2019. These comments on the proposed use variance must be considered and satisfactorily addressed.

5 The Town must consider the comments contained in the adjacent Village of New Hempstead's June 17, 2019 letter. Their concerns must be satisfactorily addressed.

The following comments address our additional concerns about this proposal.

6 The applicant must comply with the conditions of the Rockland County Highway Department's May 21, 2019 letter.

7 The applicant must comply with the conditions of the Rockland County Sewer District's June 3, 2019 letter; the outstanding impact fee must be paid.

8 A review must be completed by the Rockland County Health Department to ensure compliance with Article XIX (Mosquito Control) of the Rockland County Sanitary Code.

9 The existing yeshiva and residential buildings must comply with all requirements of the New York State Uniform Fire Prevention and Building Code.

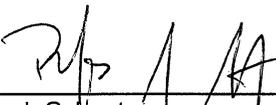
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10 A review must be completed by the Rockland County Office of Fire and Emergency Services, the Town of Ramapo Fire Inspector, or the Moleston-Hillcrest Fire District to ensure that there is sufficient maneuverability on site for fire trucks, in the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

11 Pursuant to the Rockland County Sanitary Code, Article XIII, Section 13.8.1, all multiple dwellings with three or more rental units must register and obtain a Multiple Dwelling Rental Certificate (MDRC). If this proposed multi-family dwelling meets the requirements of the Multiple Dwelling Rental Registry requirement, then the owner must register and obtain the MDRC. Failure to comply is a violation of Article XIII, which may result in penalties of \$2,000 per day.

12 Pursuant to General Municipal Law (GML) Section 239-m and 239-n, if any of the conditions of this GML review are overridden by the board, then the local land use board must file a report with the County Commissioner of Planning of the final action taken. If the final action is contrary to the recommendation of the Commissioner, the local land use board must state the reasons for such action.

13 In addition, pursuant to Executive Order 01-2017 signed by County Executive Day on May 22, 2017, County departments are prohibited from issuing a County permit, license, or approval until the report is filed with the County Commissioner of Planning. The applicant must provide to any County agency which has jurisdiction of the project: 1) a copy of the Commissioner report approving the proposed action; or 2) a copy of the Commissioner of Planning recommendations to modify or disapprove the proposed action, and a certified copy of the land use board statement overriding the recommendations to modify or disapprove, and the stated reasons for the land use board's override.

  
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Douglas J. Schuetz  
Acting Commissioner of Planning

cc: Supervisor Michael B. Specht, Ramapo  
Rockland County Department of Highways  
Rockland County Department of Health  
Rockland County Sewer District #1  
New York State Department of State  
Rockland County Office of Fire and Emergency Services  
Moleston/Hillcrest Fire District  
  
Loch Surveyors & Engineers P.C.  
Villages of New Hempstead and Wesley Hills

Mosdos Chofetz Chaim Inc.

Mona Montal, Chief of Staff  
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.*

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*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.*