



**COUNTY OF ROCKLAND**  
**DEPARTMENT OF PLANNING**

Building T  
Pomona, NY 10970  
(845) 364-3434  
Fax. (845) 364-3435

C. SCOTT VANDERHOEF  
County Executive

THOMAS B. VANDERBEEK, P.E.  
Commissioner

December 3, 2013

ARLENE R. MILLER  
Deputy Commissioner

Stony Point Zoning Board of Appeals  
74 East Main Street  
Stony Point, NY 10980

**Tax Data:** 10.02-3-4

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

**Map Date:**

**Date Review Received:** 11/15/2013

**Item:** *ROBERT & BRITTA BUSH (SP-805)*

Use variance to permit conversion of a one-family dwelling into a two-family dwelling in the RR zoning district on .77 acres.

East side of US Route 9W, west side of West Shore Drive, approximately 195 feet north of Herbert Court

**Reason for Referral:**

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 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 unnecessary hardship in order for a use variance to be granted. The Otto test requires the demonstration of the following:

- 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.

Allowing a two-family residence in the RR zoning district can set a precedent, and change the character of the neighborhood if other property owners also request a similar use variance. The more intensified use can also have a negative impact on the State highway if additional curb cuts are required, and the number of vehicles entering/exiting the site increase. One two-family residence will not have an impact on the surrounding neighborhood, traffic, etc., but if other

**ROBERT & BRITTA BUSH (SP-805)**

nearby owners also request a similar exemption, thereby setting a precedent, the intent of the zoning district can be undermined, and the increase in usage may affect the State highway. The applicant must demonstrate that all of the four criteria above have been met.

2 A review shall be completed by the New York State Department of Transportation and any required permits obtained.

3 The site plan submitted as part of the application must contain a scale, map date, title block, and name of who drew the map.



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

cc: Supervisor Geoffrey Finn, Stony Point  
New York State Department of Transportation

*\*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.*