# COUNTY OF ROCKLAND

DEPARTMENT OF PLANNING

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County Executive

THOMAS B. VANDERBEEK, P.E.
Commissioner

ARLENE R. MILLER
Deputy Commissioner

November 22, 2013

Suffern Zoning Board of Appeals
61 Washington Avenue
Suffern, NY 10901

**Tax Data:** 54.28-1-17

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

**Map Date:** 12/13/2000

**Date Review Received:** 10/24/2013

**Item:** ***STEVE ALEXANDER (SU-334)***

Use variance to allow the continued maintenance and use of an existing studio apartment in a detached garage on .1148 acres in the 2R-5 zoning district. Side yard and rear yard variances will be required if the use variance is granted.
Northwest side of Pleasant Avenue, 300 feet north of Cross Street

**Reason for Referral:**

Wayne Avenue (NYS Route 202), NYS Thruway, Harriman State Park

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. While two-family residences are a permitted use in the 2R-5 zoning district, only one residential building is allowed on an individual parcel. We caution the Village that granting this use variance to permit a residential unit in a detached garage may result in other nearby property owners seeking the same relief. This has the portential to change the community character of the surrounding neighborhood. The Village must consider whether such change is appropriate or desirable for this area.

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.

**STEVE ALEXANDER (SU-334)**

D. The alleged hardship is not self-created.

The applicant must demonstrate that an unnecessary hardship exists.

2 If the use variance is granted, both residential buildings must comply with all requirements of the New York State Uniform Fire Prevention and Building Code.

3 Since the side yard and rear yard variances are required for existing conditions and will have no adverse impacts on any County-wide interests, these variances are remanded for local determination.

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

cc: Mayor Dagan Lacorte, Suffern
New York State Department of Transportation
New York State Thruway Authority
Palisades Interstate Park Commission
Anthony R. Celentano P.L.S.
New York State Department of State,
Division of Code Enforcement and Administration
Steve Alexander

**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.*