

**DEPARTMENT OF PLANNING**

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

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

April 27, 2017

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

**Tax Data:** 54.60-1-53

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

**Map Date:** 3/30/2014

**Date Review Received:** 3/20/2017

**Item:** *SUBURBAN CAPS, I.NC (SU-114C)*

Use variance to permit the outdoor storage of retail inventory (truck accessories) for a prospective commercial use on .3738 acres in the GB zoning district.  
Southeast corner of South Street and Orange Avenue

**Reason for Referral:**

Orange Avenue (NYS Route 202); Mahwah, NJ; Mahwah River

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. While this area is characterized by a variety of uses in both the Village of Suffern and the neighboring Township of Mahwah, the applicant has not demonstrated the criteria required for a use variance. 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 submitted documentation that an unnecessary hardship exists. The use

**SUBURBAN CAPS, I.NC (SU-114C)**

variance shall not be granted until unnecessary hardship is satisfactorily demonstrated.

The following comments address our additional concerns about the proposal.

1 An application to the Zoning Board of Appeals must include a site plan with a bulk table so that the proposal's conformity to the requisite standards can be properly evaluated. The two partial maps that were submitted depict previous uses, and do not include the GB bulk standards.

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

3 The Township of Mahwah in New Jersey is one of the reasons this proposal was referred to this department for review. The municipal boundary is along the southern property line 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 Township of Mahwah must be 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 Township of Mahwah must be considered and satisfactorily addressed, as well as any additional concerns about the proposal.

4 A review must be completed by the Rockland County Drainage Agency and any required permits obtained.

5 The commercial building must comply with all requirements of the New York State Uniform Fire Prevention and Building Code.

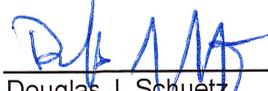
6 A review must be completed by the Rockland County Office of Fire and Emergency Services, the Village of Suffern Fire Inspector, or the Suffern Fire Department to ensure that there is sufficient maneuverability on site for fire trucks, in the event an emergency arises.

7 Aerial photography flown in 2016 shows very different site conditions than the photographs submitted with this application. In the aerial photographs, a substantial portion of the property is dedicated to the storage of trucks and equipment. Do the submitted photographs document current conditions? The hand-drawn updates to the March 30, 2014 site plan indicate that the outdoor storage will be limited to the perimeter of the site along a portion of the southern and eastern property lines, as well as adjacent to the south side and northeast corner of the building. This must be clarified.

8 Given that there is a residential structure immediately east of the site and on the opposite side of South Street, appropriate screening, including landscaping, must be provided along the entire perimeter of the property.

**SUBURBAN CAPS, I.NC (SU-114C)**

9 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.



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Douglas J. Schuetz  
Acting Commissioner of Planning

cc: Mayor Edward Markunas, Suffern  
New York State Department of Transportation  
Rockland County Drainage Agency  
Rockland County Department of Health  
New York State Department of State  
Rockland County Office of Fire and Emergency Services  
Suffern Fire Department

Mahwah, NJ  
Tim Woolley, Landscape Designer

Marc Weilacher

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.*

