

DEPARTMENT OF PLANNING

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Douglas J. Schuetz
Acting Commissioner

Arlene Miller
Deputy Commissioner

April 16, 2020

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

Tax Data: 54.36-1-5

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

Map Date: 1/29/2020

Date Review Received: 3/12/2020

Item: 46 WASHINGTON PROPERTY, LLC (SU-363)

Use variance to permit a Kollal, a religious study hall, for up to 20 people, in a 400 SF space within a 6,000 SF office building on 1.666 acres in a PLI zoning district.
Northeast corner of Lafayette Avenue and Washington Avenue

Reason for Referral:

NYS Route 59 (Lafayette Ave), NYS property

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 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.

The applicant has not demonstrated that an unnecessary hardship exists. No financial evidence has been submitted. The use variance shall not be granted.

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2 The GML referral form describes a Kollel as a reading room/study hall and a place of religious instruction. The March 5, 2020 project narrative specifies that the intended use of the Kollel is strictly as a religious study hall, and not as a yeshiva or synagogue. The proposed use, as noted on the ZBA Plan, is "religious instruction." The Short Environmental Assessment Form (SEAF) describes the use as a reading room/study hall for persons of the Jewish faith. Further research indicates that a Kollel is an institute for full-time, advanced study of the Talmud and rabbinic literature. As such, it might be considered higher level learning. It is certainly an educational use, and given the subject matter, religious in nature. The Building Inspector has defined the use as a "place of worship" which is not permitted in the PLI zoning district. Educational uses are also not permitted in this zone. They are allowed in the 2R-5 residential zoning district immediately south of the subject site. Places of worship are also permitted in the 2R-5 zone, as well as the nearby PO-15 and CB zoning districts. The fact that places of worship are permitted in PO-15 zone is called out in the project narrative. It is unclear why this information is provided. The subject site is in a Planned Light Industrial zoning district. The permitted uses that include offices; research and development laboratories; wholesaling or warehousing distribution; assembling or finishing of products; printing and lithography; and the production, fabrication, processing, converting, altering, assembling, packaging, testing or other handling of products, align very closely with this PLI zoning designation. Places of worship or higher-level educational uses would not be compatible uses in the PLI zoning district. The nearest PO-15 and 2R-5 zoning districts are on the south side of Route 59. The State highway provides an appropriate level of separation from the light industrial uses to the north. Given that Kollels can be sited in other zoning districts within the Village, we believe a use variance is inappropriate and must be denied.

The following comments address our additional concerns about this proposal.

3 A full-size drawing shall be provided. It must also include the PLI bulk standards in a separate bulk table. The existing bulk table must be properly labeled as CB bulk standards. A parking calculation must be provided, and the on-site parking spaces clearly demarcated on the map.

4 Question 5 on Page 1 of the SEAF has only one adjoining or nearby land use indicated - commercial. In addition to this commercial use, industrial, residential, parkland, and other (institutional) uses are adjoining and nearby the property. These categories must also be noted.

5 Questions 5a and 5b on Page 2 of the SEAF must be answered negatively, as the proposed action is for a use variance, since a Kollel is not a permitted use in the PLI zoning district.

6 Question 20 is answered affirmatively but no additional information is provided. The hazardous waste remediation plan must be described.

7 If the EAF Mapper Application was used to prepare the SEAF, the summary report must be attached.

8 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.

9 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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Acting Commissioner of Planning

cc: Mayor Edward Markunas, Suffern
New York State Department of Transportation

Civil Tec Engineering & Surveying PC
Savid Churgin, LLP

Mark Reichman, 46 Washington Property, 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.