

DEPARTMENT OF PLANNING

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Douglas J. Schuetz
Acting Commissioner

Arlene R. Miller
Deputy Commissioner

November 16, 2016

Upper Nyack Planning Board
328 North Broadway
Upper Nyack, NY 10960

Tax Data: 60.17-1-2

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

Map Date: 10/6/2016

Date Review Received: 10/12/2016

Item: *ROBERT WAXTEL (UN-28A)*

Site plan for a pre-existing, non-conforming use (restaurant) located in the R-4 zoning district on .398 acres. An open porch and deck are proposed, as well as the removal of seven diagonal parking spaces that hinder access into the site, one parking space within the front yard, and the creation of three new parallel parking spaces and one handicapped parking space.

East side of US Route 9W, 159 feet north of Fairview Avenue

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 A review shall be completed by the New York State Department of Transportation and any concerns addressed, and all required permits obtained.
- 2 We are concerned that adequate parking will be provided for the site since it is located on a State highway, and the site is deficient by over 46%. The Village must monitor the site to ensure that no vehicles park along US Route 9W in the event that the parking lot is insufficient to meet the parking demands. If additional parking needs are required, then the applicant must find an alternate off-site location to use for the parking needs. Under no circumstances shall any parking occur within the State highway right-of-way.
- 3 The previous site plan contained 30 parking spaces, and the new layout only provides 22 spaces. A variance for parking is required for the site plan as designed.

ROBERT WAXTEL (UN-28A)

4 The applicant is proposing to replace both the 12 sq. ft. signs with a similar sized signs. The Village of Upper Nyack should be satisfied that the proposed signs conform to the Village's sign standards.

5 The previous use for the site was a restaurant. Restaurants are permitted by special permit in the OB zoning district. Different bulk standards are listed for the OB district from the R-4 zoning district. Since the OB zoning district is the district that permits the restaurant use, should the bulk table instead list the requirements for that use? The Village of Upper Nyack must make that determination. In addition, is another special permit use be required, or does this use still fall under the previous restaurant use? This must be clarified.

6 A review must be completed by the County of Rockland Department of Health and any required permits obtained.

7 We request the opportunity to review any variances which may be necessary to implement the proposed site plan.



Douglas J. Schuetz
Acting Commissioner of Planning

cc: Mayor Jeffrey Hindin, Upper Nyack
New York State Department of Transportation
Rockland County Department of Health

DCAK - MSA

**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.