

DEPARTMENT OF PLANNING

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Douglas J. Schuetz
Acting Commissioner

Arlene R. Miller
Deputy Commissioner

February 5, 2020

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

Tax Data:

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

Map Date:

Date Review Received: 1/16/2020

Item: VILLAGE OF UPPER NYACK - WIRELESS TELECOMMUNICATION FACILITIES (UN-99)

Local Law to remove certain definitions from Article II of the Village Zoning Ordinances and to add a new Section 6:9 to Article III titled Wireless Telecommunication Facilities. The proposed Law is intended to conform the Village's regulations with federal law and Federal Communications Commission regulations. Throughout the Village

Reason for Referral:

State and County roads and parks, County streams and facilities, adjacent municipalities

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 Article IV, Sections 10 through 15 of the Zoning Ordinance must be updated to state that Wireless Telecommunication Facilities are a permitted use in the R-1, R-2, R-3, R-4, R-5, MB, VC, OB, and LO zoning districts.

2 Section 6:9.7(2)f. provides bulk requirements for height and setback, but not for other standards such as lot area or buffers. These standards should be included to better regulate the locations on which a Wireless Telecommunication Facility may be sited. In addition, the Village should consider creating different bulk requirements for each zone. A more dense residential district such as the R-5 district should have different bulk standards than a commercial district like the LO district. In the R-5 district, single-family homes are permitted on lots with less than 7,500 SF, whereas in the LO district, much larger office and laboratories are permitted with a minimum lot area of 50,000 SF. While a larger Facility may fit in with the landscape in the LO district, it may not be appropriate for a district such as the R-5 district.

3 The Wireless Telecommunication Facilities have accessory structures associated with them. Criteria shall also be designed for these structures such as buffer areas and setback requirements.

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4 The following additional comment is offered strictly as an observation and is not part of our General Municipal Law (GML) review. The board may have already addressed this point or may disregard it without any formal vote under the GML process.

4.1 The Town of Clarkstown has developed a thorough Wireless Telecommunications Facility section of their Town Code. The Village may wish to reference Section 251 of the Clarkstown Code when developing this Local Law in order to understand the scope, height restrictions, and other requirements they have imposed on these Facilities.

4.2 In Section 6:9.2, the word for definitions 1-9 are written immediately after the number. However, there is a tab between the word and number for all subsequent definitions. There should be either a tab or no tab for all of them to keep the definitions section consistently formatted.



Douglas J. Schuetz
Acting Commissioner of Planning

cc: Mayor Karen Tarapata, Upper Nyack

Town of Clarkstown
Village of Nyack

**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.