

**DEPARTMENT OF PLANNING**

Dr. Robert L. Yeager Health Center  
50 Sanatorium Road, Building T  
Pomona, New York 10970

Phone: (845) 364-3434 Fax: (845) 364-3435

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

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

May 2, 2016

West Haverstraw Zoning Board of Appeals  
130 Samsondale Avenue  
West Haverstraw, NY 10993

**Tax Data:** 20.19-8-75

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

**Map Date:** 2/23/2016

**Date Review Received:** 4/19/2016

**Item:** *T & B ENTERPRISES OF ROCKLAND INC. (WH-177)*

Parking variance and use variance to allow an existing non-conforming use (grocery store) to permit the sale of beer products for off-premises consumption, as well as beer products for on-premises consumption and a restaurant area and kitchen within the store. Seating for 30 patrons is proposed. Minimum required parking is 15 to 18 spaces for the restaurant portion of the site. The site is located in the C zoning district on .09 acres.

North side of E. Railroad Avenue, 39 feet west of Blauvelt Avenue

**Reason for Referral:**

E. Railroad Avenue (CR 94)

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.

**T & B ENTERPRISES OF ROCKLAND INC. (WH-177)**

The applicant has not demonstrated that an unnecessary hardship exists. The use variance shall not be granted.

2 We are concerned with the needed variance for parking, given the fact that the site is located on a County highway. Insufficient parking can impede the safe and efficient flow of traffic and create unsafe access conditions, and multiple movements along the roadway. The applicant indicates that five parking spaces are provided on the site. The driveway is indicated to be only ten feet wide, and therefore unfeasible for vehicles to maneuver into and out of the parallel parking spaces or turn around within the driveway area. These five spaces cannot count towards the required on site parking.

3 The site plan provided with the application illustrates that the adjacent owner to the east has a twelve foot right-of-way for access to their site, and that this is a shared driveway. This twelve foot driveway, combined with the subject property, could provide sufficient room for the five parking spaces to be made useable. This shared driveway access must be explored. If it is found to be a possibility, then a cross access easement must be provided for tax parcel 20.19-8-75 from tax parcel 20.19-8-74. This would help to alleviate some of the parking issues, but additional parking spaces must be provided as well.

4 E. Railroad Avenue is a busy County highway, that is narrow, and only 40 feet in width in front of this commercial use. Currently vehicles are parallel parking along the roadway. The applicant is proposing to intensify the use, which would result in additional vehicles needing parking spaces for a longer period of time, exacerbating the parking issues. The applicant must resolve the parking issues before the restaurant use can be approved.

  
\_\_\_\_\_  
Douglas J. Schuetz  
Acting Commissioner of Planning

cc: Mayor Robert D'Amelio, West Haverstraw  
Rockland County Department of Highways  
Rockland County Department of Health  
Jonathan N. Millen, L.L.S.

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.*