

**DEPARTMENT OF PLANNING**

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

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

August 16, 2018

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

**Tax Data:** 26.06-3-29

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

**Map Date:** 5/10/2018

**Date Review Received:** 7/13/2018

**Item:** 69 MAIN GNY LLC (WH-188)

A use variance application to re-establish a two-family use in an existing structure on 0.26 acres in the R-2 zoning district. Variances are requested for lot area, lot width, front setback, side setback, total side setback, and side yard, as well.

The western side of Main Street, approximately 230 feet north of Jones Drive.

**Reason for Referral:**

Main Street (CR 33)

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 Section 250-26.A(2) of the village regulations states that a nonconforming use "shall not be reestablished if such use has been discontinued for any reason for a period of one year or more..." According to the village's review work sheet dated May 30, 2018, the structure has been "vacant for years". Subsequently, the property has lost its legally non-conforming status. While the structure is non-conforming for the bulk requirements of Use Group B, for which the applicant has requested variances, two-family dwellings are not allowed either by right or by special permit in the R-2 zoning district. Therefore, the reestablishment of a two-family use requires a use variance, as well.

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.

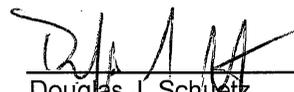
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- B. The alleged hardship is unique and does not apply to a substantial portion of the district or neighborhood.
- C. The requested variance will not alter the essential character of the neighborhood.
- D. The alleged hardship is not self-created.

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

The following comments address our additional concerns about this proposal.

- 2 A review must be completed by the County of Rockland Department of Highways and all required permits obtained from them.
- 3 A review must be completed by the Rockland County Department of Health to ensure compliance with Article XIX (Mosquito Control) of the Rockland County Sanitary Code.
- 4 The site plan shall include map notes, including district information, and a vicinity map with a north arrow and scale.
- 5 The bulk table heading indicates it is providing the requirements for a two-family dwelling. The heading must be changed to Use Group B "all other uses" to avoid implying that two-family dwellings are an allowed use in the R-2 zoning district. However, this category is meant to reflect the "other uses" permitted by a special permit of the ZBA, as listed as Use Group 'B', and not as a catch-all for any proposed use. The bulk table must indicate that a use variance is required.
- 6 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.
- 7 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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Douglas J. Schuetz  
Acting Commissioner of Planning

cc: Mayor Robert D'Amelio, West Haverstraw  
Rockland County Department of Highways  
Rockland County Department of Health  
Anthony R. Celentano P.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.*

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*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.*

