

DEPARTMENT OF PLANNING

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Douglas J. Schuetz
Acting Commissioner

Helen Kenny Burrows
Deputy Commissioner

October 17, 2022

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

Tax Data: 59.12-2-1

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

Map Date: 08/09/2022

Date Review Received: 09/15/2022

Item: 536 NORTH HIGHLAND AVENUE (UN-19L)

Special permit to allow the overnight parking of commercial vehicles on a 1.79-acre lot in the OB zoning district. An additional special permit is also requested to allow the parking of vehicles which may not be associated with the tenants of the existing building on the site. An office is located on the second floor of the building, and the owner is currently in negotiations with a catering company for the first floor space. Eighteen spaces are designated for overnight parking. A variance for less than the required number of parking spaces was previously granted.

West side of North Highland Avenue, approximately 892 feet north of Christian Herald Road

Reason for Referral:

North Highland Avenue (US Route 9W), Long Path Hiking Trail, Town of Clarkstown

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 The Village must determine whether a catering company is considered a restaurant use. If not, a use variance will be required to allow the proposed first floor use. 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 Zoning Board of Appeals (ZBA) that for each and every permitted use under the zoning regulations for the particular district where the property is located:

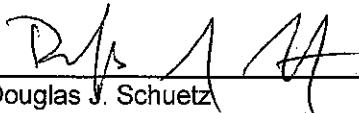
- A. The applicant cannot realize a reasonable return, provided the lack of return is substantial as shown by competent financial evidence.
- B. The alleged hardship is unique and does not apply to a substantial portion of the district or neighborhood.
- C. The requested variance will not alter the essential character of the neighborhood.
- D. The alleged hardship is not self-created.

If it is determined that a use variance is needed, and application addressing each of the above points must be submitted to the ZBA and this department for review.

536 NORTH HIGHLAND AVENUE (UN-19L)

- 2 Special permit uses are, by definition, subject to a higher standard of review than as-of-right uses. The Village shall be satisfied that the proposed parking of commercial vehicles complies with the general standards for special permit uses outlined in Section 9.5 of the Zoning Code, as well as the additional requirements of Section 6.1.3.7.2.
- 3 As per Section 6.1.3.7.2, vehicles not related to the principal use on the lot may not be parked in a space that is required for the principal use. The applicant is proposing an area of 18 spaces to be designated for the overnight storage of commercial vehicles, but the site plan does not specify how many are needed for the catering company. The Village must be assured that the 18 spaces will be sufficient for both the principal catering use, as well as for the vehicles not related to this use.
- 4 Section 6.1.3.7.2 also states that the parking of commercial vehicles is prohibited in the building front yard, but may be located in the required side or rear yard. It must be clarified whether the building front yard refers to the required 20-foot setback standard for the building or to the area between the front of the building and the eastern property line. If it is the latter, four of the 20 spaces in the area highlighted for commercial vehicle storage will not be permitted for this use.
- 5 As required by Section 6.1.3.3.6, areas designated for snow removal must be clearly delineated on the site plan so that the plow drivers will know where to place the snow piles. Providing specific locations on the site for the snow piles will reduce the loss of available parking spaces meant to be used by customers. In addition, this will help to protect the existing landscaping from damage due to the weight of the snow and salt intrusion.
- 6 A note on the site plan indicates the six western spaces were approved for overnight parking of cargo van and construction vehicles. It must be clarified whether these vehicles are considered commercial vehicles. If so, a special permit is required.
- 7 Section 5.3.3.2 of the Zoning Code requires a planting strip that has a width of 10 feet be maintained along the lot's Route 9W frontage. For each 100 lineal feet (or major fraction thereof), there shall be four deciduous shade trees and two evergreen trees. Shrubs, hedges, ground covers, and flowers must also be dispersed in this area. A landscaping plan that includes these elements must be provided to help shield the view of the proposed vehicle storage from the State highway.
- 8 A review must be completed by the New York State Department of Transportation, any comments or concerns addressed, and all required permits obtained.
- 9 The Town of Clarkstown is one of the reasons this proposal was referred to this department for review. The municipal boundary is along the western property line of the site. As required under Section 239nn of the State General Municipal Law, the Town of Clarkstown must be given the opportunity to review the proposed special permit and provide any concerns related to the project to the Village of Upper Nyack.
- 10 The New York - New Jersey Trail Conference must be given the opportunity to review the proposal, and any concerns addressed.
- 11 The northern entrance to the site is proposed to be reconfigured so that a vehicle entering the site does not conflict with a vehicle parked in the northeastern space. However, this new entrance will still only leave approximately 14-15 feet for a vehicle to park, which is insufficient. This space must be removed so that there is no conflict between parked vehicles and those entering the site.
- 12 The August 9, 2022 site plan illustrates an area with an unknown owner between the western property line and the municipal boundary. The 2021 tax maps depicts the western boundary at the municipal line. The applicant and Village shall determine whether the subject property is part of this discrepancy.
- 13 The vicinity map was generated using information provided by the GIS Division of the Rockland County Planning Department. This must be credited.

536 NORTH HIGHLAND AVENUE (UN-19L)



Douglas J. Schuetz
Acting Commissioner of Planning

cc: Mayor Karen Tarapata, Upper Nyack
New York - New Jersey Trail Conference
New York State Department of Transportation

Kier B. Levesque, RA
Town of Clarkstown Planning Board

**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.