



# Rockland County

Ed Day, Rockland County Executive

**DEPARTMENT OF PLANNING**

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**Douglas J. Schuetz**  
Acting Commissioner

**Helen Kenny Burrows**  
Deputy Commissioner

November 3, 2022

Nyack Planning Board  
9 North Broadway  
Nyack, NY 10960

Tax Data: 60.77-2-61

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

Map Date: 07/14/2022

Date Review Received: 09/08/2022

Item: **245 NORTH MIDLAND AVENUE (N-177D)**

Site plan for the change of use from one non-conforming use to another. The current use includes workshops and offices on the first floor and two apartments on the second floor. The proposed use is multi-family, with three apartments on the first floor and the two existing apartments remaining on the second floor. The building is located on 0.15 acres in the TFR zoning district. Previous approvals granted in 2016 and 2018 have expired.

Northeast corner of North Midland Avenue and Sixth Avenue

**Reason for Referral:**

Village of Upper Nyack

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 Section 360-5.2B(2)(d) grants the Zoning Board of Appeals (ZBA) the power to hear and decide requests for special permits to alter, enlarge, or extend lawfully existing non-conforming uses. As per Section 360-1.9D(3), non-conforming uses that have been discontinued for a year or more shall not be reestablished. It must be stated whether the non-conforming workshop and office on the first floor are currently existing, or if these uses have been dormant for one year or longer. If the commercial use on the first floor has been abandoned for one year or more, then it is no longer entitled to non-conforming status and, therefore, cannot be changed to another non-conforming use by the ZBA, as per Section 360-1.9D(2). In addition, it is our opinion that the changing of one non-conforming use to another is not altering a non-conforming use, but rather the establishment of a new non-conforming use. As such, a use variance should be required to be obtained for the proposed multi-family dwelling. The Village must determine if this is necessary. This department is not generally in favor of granting use variances because of the land use precedent that can be set. If a use variance is required, the 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 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.

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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.

If a use variance is required, a new application must be submitted to the ZBA that details how each of the four conditions to demonstrate unnecessary hardship are met. The site plan cannot be acted upon unless the use variance, if needed, is approved.

2 It is unclear what bulk standards apply to the proposed multi-family dwelling. The bulk table on the site plan uses the standards for a one-family dwelling in the TFR district. However, two family dwellings in this zone must follow standards that have a stricter lot area and lot width requirement, as per Table 4-1, Dimensional Standards. This seems more appropriate for a multi-family structure rather than the standards for a one-family dwelling. Additionally, the Village has three multi-family zoning districts which are subject to stricter bulk requirements. This must be clarified before the Planning Board can make a decision on the site plan, and any additional variances noted.

3 As noted above, the bulk standards being applied to the proposed multi-family dwelling are those listed for one-family dwellings in the TFR zoning district. Dwelling units must have a minimum of 900 SF to comply with these standards. The bulk table on the site plan states that the units will be ">900" SF. However, the first floor plans depicted on Sheet A-2 indicates that two of the three proposed units are less than 900 SF. These units are noted to be 779 SF and 853 SF. The square footage of the two existing units on the second floor is not provided, but they also appear to be less than 900 SF. The bulk table must be amended to reflect this, and indicate a variance is needed.

4 Table 4-1 establishes that uses in the TFR zoning district must provide usable open space. For one-family dwellings, as is being followed by the applicant, a minimum of 1,000 SF per dwelling unit is required. For two-family dwellings, at least 500 SF per dwelling unit must be provided. In addition, both columns list a maximum building coverage of seven percent. The provided bulk table does not include either requirement. The site plan must be amended to state these requirements, how the site complies and, if required, state that variances are needed from these standards.

5 The lot width is stated to be 102 feet. This is the width based on the North Midland Frontage. It must be clarified whether the lot width along Sixth Avenue shall also be included on the bulk table, or if it should be used instead as, at 65 feet, it is the lesser of the two widths. While a width of 65 feet complies with the bulk requirement for one-family dwellings in the TFR district, it is less than the 75 feet needed for two-family dwellings.

6 As per Table 4-2, two parking spaces per dwelling unit, or one space for efficiency units, are required in the TFR zoning district. In addition, Section 360-4.5B(3) states that the owner must provide parking equal to the difference between the parking requirement of the existing use and the parking requirement for the new use, or a variance is needed. A total of five units are proposed, all containing at least one bedroom; therefore it appears that 10 parking spaces are required for the new use. A parking table must be provided on the plans stating the requirement of the existing use, and showing a calculation for the required parking. If the proposed change from a commercial use to a residential use results in an increase in the required number of parking spaces, then a parking variance is required. All required parking must be provided on site, or an alternate off-site parking arrangement instituted.

7 The two western parking spaces are awkwardly positioned and will make entering and exiting the site difficult for all vehicles. These spaces will also make it hard to maneuver in and out of the northern and southern spaces on to the east. In addition, it will be difficult for a vehicle to back out of the northeastern space without the need to reverse through the entire parking area due to the location of the proposed stairwell. If the parking cannot be accommodated on-site without creating safety concerns, an off-site parking agreement will be required.



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8 As per Section 360-1.9D(2), the ZBA may grant a special permit to allow the change of use from one non-conformity to another, so long as a less intense use than what previously existed is proposed. The ZBA may determine that a residential use is less intense than the existing commercial use. However, the determination regarding the nature of the proposed use does not entitle the applicant to an unlimited number of residential units. As stated above, the proposed units do not meet the minimum square footage required for the zoning district. In addition, the number of units proposed impacts the number of required parking spaces. As noted in the previous comment, there are serious inadequacies with the proposed parking layout. The proposed change from a commercial use to a residential use may be determined to be less intense, but due to the constraints of the parking area and the non-compliant size of the proposed units on the first floor, it may be more appropriate to reduce the number of units to four. The Planning Board must be assured that the site has the capacity to accommodate the proposed number of units.

9 The site plan depicts three entrances to the building along North Midland Avenue and three along the southern façade of the building. The Front (Midland) Elevation on sheet A-4 only illustrates one doorway along North Midland Avenue whereas the South (Parking) Elevation depicts two doors along the southern façade. The entrances on the floorplans match the elevations. The site plan must be amended to note the removal of the existing doorways and the location of the proposed entrances.

10 A review must be completed by the County of Rockland Department of Health, any comment or concerns addressed, and any required permits obtained.

11 Pursuant to the Rockland County Sanitary Code, Article XIII, Section 13.8.1, all multiple dwellings with three or more rental units must register and obtain a Multiple Dwelling Rental Certificate (MDRC). If this proposed multi-family dwelling meets the requirements of the Multiple Dwelling Rental Registry requirement, then the owner must register and obtain the MDRC. Failure to comply is a violation of Article XIII, which may result in penalties of \$2,000 per day.

12 The Village of Upper Nyack is the reason this proposal was referred to this department for review. The municipal boundary is 492 feet north of the site. As required under Section 239nn of the State General Municipal Law, the Village of Upper Nyack must be given the opportunity to review the proposed site plan and provide any concerns related to the project to the Village of Nyack.

13 We request the opportunity to review the special permit application and any variances that may be needed to implement the proposed site plan, as required by New York State General Municipal Law, Section 239-m (3)(a)(iii) & (v).

14 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.

15 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.

16 The following additional comments are offered strictly as observations and are not part of our General Municipal Law (GML) review. The board may have already addressed these points or may disregard them without any formal vote under the GML process.

16.1 Sheet A-3 depicts the second floor and roof plans. The label below the drawing must be amended as it states it is the first floor plan.

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16.2 The word "Tak" in Map Note 1 shall be corrected to "Tax".

  
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Douglas V. Schuetz  
Acting Commissioner of Planning

cc: Mayor Donald N. Hammond, Nyack  
Rockland County Department of Health  
  
Jay A. Greenwell, PLS, LLC  
Village of Upper Nyack Planning Board

**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.*