



**TOWN OF VESTAL
ZONING BOARD OF APPEALS**
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Chairman:
Members: Mark Tomko
Tom Smallcomb
Thomas Jackson, Jr.
Alternates: Eugene Burns
John Taylor
Attorney: Matthew Butler

**TOWN OF VESTAL
ZONING BOARD OF APPEALS**

In the Matter of the Application of

Clifford & Beth VnaDervort
457 Powderhouse Road
Vestal, NY 13850
B.C.T.M.P. # 190.04-1-12

RECEIVED
SEP 25 2020
VESTAL CODE

DECISION

For a use variance as required by Chapter 24, Article IV, Division 1, Section 24-151 of the Code of The Town of Vestal, Broome County, New York
(Zoning Ordinance)

At a meeting duly scheduled for September 24, 2020 the Zoning Board of Appeals of the Town of Vestal held a public hearing to consider the application of Clifford & Beth VanDervort, regarding premises situate at 457 Powderhouse Road, (B.C.T.M.P.# 190.04-1-12) for a use variance as required by Chapter 24, Article IV, Division 2, Section 24-151 of the Code of The Town of Vestal, Broome County, New York (Zoning Ordinance), pertaining to a property use that is not permitted in a R-R, Rural Residential zoning district. A use variance is requested to allow the approval for the construction of/continued use of a second principal structure on the single noted parcel. Appearing in support of the use variance request is the applicant Clifford VanDervort and his attorney, Sarah Grace Campbell, esq.

Proof of publication of the notice of the hearing in the Town Crier was submitted, and the Board's letter to the applicant in response to his application was read. The applicant submitted a letter, survey map with plot lines for the property and adjoining properties, pictures of the property, GIS Property Detail Summary, 2019 School, Town & County tax bills, completed Short Environmental Assessment Form, a letter of support from a neighbor in support of the requested variance, and a letter from Warren Real Estate expressing there would be no detrimental financial impact to surrounding properties with this use variance.

Board members present, Mark Tomko, Acting Chairman, Thomas Jackson, Eugene Burns and John Taylor. All Board members stated that they had visited the site and were familiar with the character and nature of the area and this property.

After due deliberation, the Zoning Board of Appeals makes the following findings of fact and conclusions of law:

Applicant is requesting to keep using and renting an apartment located above his detached garage. The applicant stated that the land where the property is located was purchased in 1979 as two parcels and then combined into one parcel and the detached garage was built around 2004 to be used for car storage and the upstairs area was for storage. Over time, as his children grew he finished off the space to use for them as a hangout space and kept improving the space to eventually be a one bedroom, 600 square foot apartment that they utilized when they returned home to visit after moving away. He is now retiring and would like to rent the small apartment as he plans to travel to see his children and grandchildren where they reside. If the variance is not allowed, he would not rent the space and use it as storage.

Applicant argues that the use variance request is subordinate to the primary use, and it is a gray area as residential use is permitted in an RR-Rural Residential zoning district along with a second residential unit, just not in a detached structure. Applicant provided 4 addresses within the surrounding rural area, 2 on Powderhouse Road and 2 on Castleman Road, where there are detached apartments over garages. While this is not an exhaustive list nor showing zoning should be changed, it does show that this is being done in the Town on a limited basis in similar area.

Applicant argues the use is accessory to the primary residence use due to its small size and nature, as this evolved over time as the children grew and eventually moved out and then returned for visits. Since 2 family dwellings are allowed, although in attached units, this was not intended to be a separate rental unit, it evolved into it. Applicant was not able to provide actual costs of improvements since it evolved over time, they did provide an estimate of at least \$8,000 over the years as well as annual \$6,600 in Town, County and School taxes for the property.

Applicant argues the situation was not self created as the apartment evolved over time to allow his children to utilize the space as their needs grew and evolved. He is now just looking to use the space as completed and improved. Letters from a neighbor, Jeffrey Hayes at 427 Powderhouse Road and Penny Pelletier from Warren Real Estate supported the use variance and showed that there would be no detrimental effect to the neighboring properties if this use variance is granted.

The meeting was opened to the public, and no one appeared in support or opposition of the variance. The public portion was closed as no other members of the public were present or wished to be heard.

A 2391 & m submission to and response from the Broome County Department of Planning and Economic Development showed no comments or concerns.

This is a use variance under 2,000 sq. ft. and the provisions of SEQR do not apply.

Therefore in consideration of the above, and in balancing the factors of; 1.) Property is incapable of earning a reasonable rate of return on initial investment if used for any of the allowed uses; 2.) The property is being affected by unique, or at least a highly uncommon circumstance;

3.) The variance, if granted, will not alter the essential character of the neighborhood; and 4.) The hardship was not self-created;

A motion was made by Eugene Burns to grant a **Use Variance to allow the construction of/continued use of a second principal structure on the single noted parcel** per Chapter 24, Article IV, Division 1, Section 24-151 at B.C.T.M.P.# 190.04-1-12 aka 457 Powderhouse Road, Vestal, NY 13850 to Clifford & Beth VanDervort as presented to the Board. Thomas Jackson seconded the motion. A vote was called and:

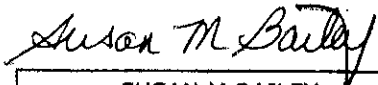
The request for a **Use Variance** is hereby **GRANTED** by a **3-1** vote. The vote was not unanimous and the votes were cast as follows: Acting Chairman, Mark Tomko-NAY, Thomas Jackson-AYE, John Taylor-AYE, Eugene Burns-AYE.

The Code Enforcement Officer is herewith authorized to take the necessary action to carry out the provisions of this Decision.

Dated: September 25, 2020

ZONING BOARD OF APPEALS
OF THE TOWN OF VESTAL

BY: 
Mark Tomko, Acting Chairman


SUSAN M BAILEY
Notary Public - State of New York
No. 01BA6405217
Qualified in Broome County
Commission Expires 03/02/2024