



TOWN OF VESTAL
ZONING BOARD OF APPEALS
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ZBA BOARD MEMBERS:

Chairman: Mark Tomko
Members: 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

Michael Danek
1312 Glenwood Road
Vestal, NY 13850
B.C.T.M.P. # 189.07-1-24

RECEIVED

NOV - 9 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 October 22, 2020 the Zoning Board of Appeals of the Town of Vestal held a public hearing to consider the application of Michael Danek, regarding premises situate at 1312 Glenwood Road, (B.C.T.M.P.# 189.07-1-24) 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 an RA-1, One Family Residential zoning district. An amendment to a use variance previously granted by the Town of Vestal Zoning Board of Appeals on January 9, 2020 is requested to allow the variance that it not be vacated and not be deemed null and void if the property were converted back from a 2-family to a 1-family; or if said residence is ever torn down or removed. Appearing in support of the use variance request is the applicant Michael Danek and his realtor, Donna Roosa.

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 outlining his request along with a copy of the previous Use Variance granted.

Board members present, Mark Tomko, Acting Chairman, Thomas Jackson, Eugene Burns, Tom Smallcomb and Clayton Ellis. 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 a modification to the wording of the previously granted variance in order to sell the property. The potential buyer is using Federal Housing Association (FHA) to

purchase the property and the FHA Underwriter is objecting to the last sentence of the previous decision which is impeding their ability to sign-off on the sale of the property.

The applicant is requesting that the challenging words in the current sentence, "or otherwise removed" be modified. As currently stated, if the house is torn down by an "Act of God" such as a tornado or fire, the property owner would be required to rebuild as a single family residence. For the FHA underwriter to be able to sign off on the sale, the property owner must be allowed to rebuild as a 2-family in the exceedingly low likely hood of the property being torn down due to an "Act of God". If the property owner were to deliberately tear down the property, the variance would terminate and the property would revert back to RA-1.

Applicant states that a lot of time, money and effort was invested to convert the property to a 2-family unit which meets code. The buyer also has a lot of money into the sale including inspections, appraisals, legal fees, etc. All inspections and appraisals have been completed at this time and this is the final step in completing the sale of the property.

The meeting was opened to the public, and Mr. John Weeks, residing at 449 Fox Road, Castle Creek, NY who is the buyer of the property spoke in favor of the change in the Use Variance language. He stated he is buying the house with the intention of living in one unit and having his son and his family live in the other unit. No one appeared in opposition of the variance. The public portion was closed as no other members of the public were present or wished to be heard.

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 Clayton Ellis to grant a **Use Variance** as per Chapter 24, Article IV, Division 1, Section 24-151 at B.C.T.M.P.# 189.07-1-24 aka 1312 Glenwvood Road, Vestal, NY 13850 to **allow the use of this property as a 2-family residence in an RA-1 Residential District as presented to the Board**. If it is ever converted back from a 2-family to a 1-family, this variance shall be vacated and deemed null and void. In addition, if said residence is ever deliberately torn down, the variance shall also terminate and the only permitted use of the property shall revert to RA-1. If the house is destroyed by a natural disaster or fire, the house may be rebuilt to the current blue print. This blueprint/appraisal shall be submitted to the Code Enforcement officer. This variance supersedes and nullifies the previous Use Variance granted on January 9, 2020. Tom Smallcomb seconded the motion. A vote was called and:

The request for a **Use Variance** is hereby **GRANTED** by a 4-1 vote. The vote was not unanimous and the votes were cast as follows: Acting Chairman, Mark Tomko-NAY, Thomas Jackson-AYE, Tom Smallcomb-AYE, Eugene Burns-AYE, and Clayton Ellis AYE.

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

Dated: October 26, 2020

ZONING BOARD OF APPEALS
OF THE TOWN OF VESTAL

BY: 
Mark Tomko, Acting Chairman
