



**TOWN OF VESTAL
ZONING BOARD OF APPEALS**

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ZBA BOARD MEMBERS:

Chairman: Jennifer Kakusian
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

860 Vestal Empire, LLC
860 Vestal Road
Vestal, NY 13850
B.C.T.M.P. # 157.58-2-6

RECEIVED

NOV 17 2020

VESTAL CODE

DECISION

For an area variance as required by Chapter 24, Article IV, Division 2, Section 24-182(b)(1) and Chapter 24, Article IV, Division 2, Section 24-182(c)(1)(a) of the Code of The Town of Vestal, Broome County, New York
(Zoning Ordinance)

At a meeting duly scheduled for September 10, 2020 the Zoning Board of Appeals of the Town of Vestal held public hearing to consider the application of 860 Vestal Empire, LLC, regarding premises situate at 860 Vestal Road, (B.C.T.M.P.# 157.58-2-6) for a use variance as required by Chapter 24, Article IV, Division 2, Section 24-182(b)(1) pertaining to having less than the minimum required lot area for the number of dwelling units and Chapter 24, Article IV, Division 2, Section 24-182(c)(1)(a) of the Code of The Town of Vestal, Broome County, New York (Zoning Ordinance), pertaining to creating a four story building greater than forty (40) feet in height in an RC, Multiple Residence zoning district. Two (2) area variances are requested to allow the construction of a 55+ years of age housing project, adding two (2) stories to the existing building in order to establish 128 dwelling units. The Code allows a three (3) story building not greater than forty (40) feet in height. The Code requires not less than 3,000 of lot area per dwelling unit. 128 dwelling units would require 384,000 sq. feet of lot area and the current lot is 220,413 sq. feet which would permit the construction of only 73 dwelling units. This is a re-hearing of the same proposed project, which was approved in June of 2017. Appearing in support of the variance request is the applicant's attorney Palmer Pelella and Issac Andrew.

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 this application was read. The applicant submitted a brief letter along with building plans, site plan, landscape plans and renderings of the north and south elevations.

Board members present, Mark Tomko, Acting Chairman, Tom Smallcomb, and John Taylor. This is a re-hearing of the same project that was approved by the ZBA in June of 2017 but had expired due to the variance not being utilized within a 4-month time period, and since the Broome County Department of Planning and Economic Development had initially recommended denial of the project, a super majority of the ZBA Board would be needed for approval. Since only three (3) Board members are present out of a Board of 5, a super majority vote could not take place. The applicant was given the choice to proceed with the presentation and vote or request a continuance until the next ZBA meeting scheduled for September 24, 2020, the applicant requested the continuance until the September 24, 2020 meeting and will present the case then.

A motion was made by Tom Smallcomb to grant a continuance until the next scheduled meeting on September 24, 2020. This motion was seconded by John Taylor and a vote was called and a continuance was **GRANTED by a 3-0 vote**. The vote was unanimous and the votes were cast as follows: Acting Chairman, Mark Tomko-AYE, Thomas Smallcomb-AYE, and John Taylor-AYE.

The hearing for 860 Vestal Empire, LLC was reconvened on Thursday, September 24, 2020 at 7:03 PM. The applicants were present along with ZBA board members 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 and the application. In addition, the four members present represent the minimum number of members needed for a super-majority vote as required based upon the Broome County Department of Planning and Economic Development's 239 l & m denial of the project.

In addition to the submitted materials from the previous meeting, an additional Email of support from John Stevens & Anne Catalano, residing at 808 Old Vestal Lane, Vestal, NY 13850 was added was read and submitted to the record. The applicant provided a quick review of the project indicating there was no change in the plans that were presented and approved in 2017 by the ZBA and planning board. The need for a new approval of the variances is due to the fact that the applicant did not act on the previous variance by starting construction in the 4-month interval after the variance was approved. The previous three (3) variances approved in June of 2017, for minimum lot area, a 5-story building over forty (40) feet in height, and parking spaces has now changed to only two (2) variance requests, one for the minimum lot area and the other for building height are now the only needed variances. The parking requirements code was revised in 2018 thus eliminating this variance request.

The applicant explained that the project is to build upscale, affordable residential housing for persons over the age of 55, and that the building will not be a care facility or "senior housing" in the sense that it is a regulated facility for seniors. The 128 units would be a mix of 1-bedroom, 2-bedroom, and 3-bedroom units with some amenities in the center area of the building. There will be an addition of 2 stories to the current footprint of the building. Since they cannot build outside of the current footprint of the building, they need the additional 2 stories and 128 units to make the project financially viable. The project has been delayed for three (3) years, and thus the variance not being acted upon, due to financing issues and those have now been worked out and they are ready to proceed.

The applicant also reviewed the previous variances and explained that they have gone out and purchased 900 Old Vestal Road to add additional acreage to the help decrease the variance request for minimum lot area. They have 6.57 acres with this site added, but the resident is being allowed to live in this residence until he can no longer live alone here or until his death (life-long use was the only way to secure the sale) so the current variance request is still based on the current 5.06 acres.

The meeting was opened to the public and Debbie Ryer of 831 Old Vestal Lane raised the concern of the sewer infrastructure, as this has backed up before and has flooded her basement with sewage. Barry Isles of 809 Old Vestal Lane was worried about the sewage as well. He stated that it runs downhill from the nursing home site (applicant's site) to a holding tank and then pumped out, but sometimes the pumps don't work so it backs up into the homes below. He is worried that adding 128 new housing units would add to the problem, especially if there are so many 2 and 3 bedroom units. He states the pumps don't always work, or pump sewage as needed resulting in back-ups. He stated this has not happened in at least the last 3 years since the nursing home closed. He was also concerned about the not having the needed amount of minimum lot square footage needed and wondered about why the parking code variance was no longer needed, as if there is flooding or not enough spots then parking on the street would be an issue. As no one else was asking to be heard, the public meeting was closed.

The Board members discussed and asked the applicants questions regarding the neighbors concerns about the needed acreage and sewage concerns. The applicants stated they had received planning board approval after the previous variances were issued and part of that was to have them install a grinder and pump to help prevent any large objects being pushed to the holding tanks prior to being pumped out. The board also asked the applicants if the project could work with less than 5 stories in the rear or if they could reduce the units. Applicants again stated that the project was designed and financing in place to work with these numbers, and if units are decreased, the project would not be viable. They also stated that part of the problem is that the back of the building is 5 stories, not 4 since the lower level floods and cannot be used for residences. They could possibly fill in the rear area of the building to change the grade, but that would be expensive and a retaining wall was being built to hide this area and that it would only be used for storage of items if needed. So in reality, the building is really 4 stories not 5 based on this and only 4 would be occupied.

The Board continued to hear some questions regarding the sewage issue when the applicant was addressing this issue. The code enforcement officer could not explain what the issues were or if they were addressed by the water and sewer department or what the planning board had done in regards to this issue back in 2017. The planning board had approved the plan after the ZBA had granted the previous variances. Based on the neighbors stating the issues with sewage and wanted answers since they had not been advised about the planning board's conditions on the applicant, they were pressing as to why they were not invited to the planning board review. This was discussed with the code enforcement officer and we did not have any answers for the residents in regards to their concerns from either the planning board or water & sewer departments. Since this is not scheduled to be heard again by the planning board, and since the ZBA cannot condition another board, we are unable to provide any answers to this concern.

Based on this, the board members were concerned and wanted to see if we could get the answers from the planning board and the water & sewer departments. The applicant could only

state that they were willing to include a grinder to their side of the sewer system and had agreed to this with the planning board 3 years ago, but could not state anything else as to what was discussed/ approved. With this concern growing, and the neighbors and ZBA looking at what if anything could be done or needs to be done to accommodate this project. The Board members were looking to get some answers prior to granting variances and the applicant was asked if they would like to adjourn the meeting until this aspect could be reviewed and answers obtained. The applicants agreed and asked to have the meeting adjourned until the next scheduled meeting on October 22, 2020 when we could have either someone present from the water department and answers from the planning board's approval and conditions.

A motion was made by Tom Jackson to grant a continuance until the next scheduled meeting on October 22, 2020. This motion was seconded by John Taylor and a vote was called and a continuance was **GRANTED by a 4-0 vote**. The vote was unanimous and the votes were cast as follows: Acting Chairman, Mark Tomko-AYE, Tom Jackson-AYE, John Taylor-AYE, and Eugene Burns-AYE.

The hearing for 860 Vestal Empire, LLC was reconvened on Thursday, October 22, 2020 at 6:25 PM. The applicants were present along with ZBA board members 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 and the application. Board member Tom Smallcomb was not present at the previous meeting and Mr. Clayton Ellis was new to the Board and was not present at either of the two previous meetings.

The applicant was asked to review the plan in a synopsis form and updated on the status of acquiring the additional land at 900 and 906 Old Vestal Road. 900 Old Vestal Road was acquired and the resident at this house/property had recently passed away and the property will be demolished in the near future and the land incorporated into the current plot at 860 Old Vestal Road. The property at 906 Old Vestal Road is owned by Broome County and is still not available for purchase. This property is not developable and a building cannot be legally built in its present configuration. Once 900 Old Vestal Road is incorporated into 860 Old Vestal Road, the total acreage will increase from 5.06 acres to 6.67 acres. This would then allow for a permitted 90+ units not the 73 currently allowed by code. The height of the addition of two stories requires a 15 foot variance due to the grade issue at the rear of the building. The lowest level of the building in the rear will not be used for residences, only cold storage. The addition creates a total of 5 stories in the rear and 3 stories in the front of the building as planned. Since grade is measured from the lowest point, a 15 foot variance is needed. If the applicant were to fill in the lowest point and bring the grade to level with the front and side, then the variance request would decrease to 4 feet. In addition, filling in the lower area of the property would be expensive and contribute to greater flooding of the neighbors properties when and if flooding were to happen in the future. If the applicant was to expand the footprint to the sides/rear of the building instead of building a higher floor, then less green space and more impervious land would be present leading to greater storm water management capacity issues.

The meeting was also re-opened to the public to clarify items that were brought up at the previous meeting. The Town of Vestal Water and Sewer department had visually inspected the sewer line on Old Vestal Lane with a camera from the Nursing Home lateral to the pump station.

Scott Groats, Water Superintendent, stated that the pipe is clear and in good condition. The only noted issues are a root condition by the nursing home lateral and a “broken void visible” around 820 Old Vestal Lane. The report was attached after being read to those in attendance. Clarification of dates was asked of the public and Mr. Barry Isles, Debbie Ryer and Linda Savage (820 Old Vestal Lane) added comments and clarification. They state that this has been a problem going back to before 2006 and the flood. The issues were discussed with the Town Board to try and resolve them, but they still have not been completely resolved. In 2011 there were more back-ups even after the nursing home had been closed so this continues to be an ongoing issue. Residents state that the Town is still pumping out the tanks and they are very concerned about adding 128 units with more sewage being put into the system if it can’t handle what is being discharged currently. The Residents were reminded that the Planning Board had approved this project in 2017 and should have considered this issue in that process, but since there are no changes to the plans, it did not need to be revisited or re-heard by the Planning Board. The Broome County Department of Planning and Economic Development also did not need to re-comment since there were no changes from the 2017 application. Only the Vestal ZBA is re-hearing the case since the applicant did not start the project within 4 months of receiving their variances in 2017 and they had therefore expired.

Mr. Palmer Pelella stated that the installation of a grinder was part of the Planning Boards previous condition and this would help keep large articles from getting into the sewer system, but also noted there is currently an issue with the system with or without this project being approved and developed. The residents concerns might be increased by the addition of 128 units, but issues exist currently and the residents should raise concerns to the Town Board as well. They are willing to help address and alleviate concerns and the grinder pump is one of the ways they have already agreed to help. They will also look at the “root issue” near their lateral to the main line. The shadow study from 2017 was also reviewed with the neighbors showing that the building would not cast a shadow on any property near the proposed facility as presented.

Board members reviewed and discussed the issues at hand, but since we don’t have anything from the Town other than the sewer line is open with only 1 visible void noted and we can’t condition other Boards or agencies to act or even have them attend a meeting to discuss, we are still in the position that we were in last month, no real answers for the residents and their concerns about the sewer system. The Board also discussed that the Zoning Board is only to look at the variance request and make a decision on the variances at hand, number of dwelling units and height. Since 2 of the members present were not completely up to speed on the previous meetings, it was discussed with the applicants if they would like to have a vote tonight or ask for a continuance so that Mr. Smallcomb and Mr. Ellis could listen to the previous meetings that were recorded to become more familiar with the previous discussions. The next time the Zoning Board could meet to hear the case would be November 12, 2020. The applicants decided to ask for the continuance to 6:00 PM on November 12, 2020.

A motion was made by Tom Smallcomb to grant a continuance until November 12, 2020. This motion was seconded by Tom Jackson and a vote was called and a continuance was **GRANTED by a 5-0 vote**. The vote was unanimous and the votes were cast as follows: Acting Chairman, Mark Tomko-AYE, Tom Jackson-AYE, Tom Smallcomb-AYE, Clayton Ellis-AYE and Eugene Burns-AYE.

The hearing for 860 Vestal Empire, LLC was reconvened on Thursday, November 12, 2020 at 6:03 PM. The applicants were represented by Palmer Pelella, their attorney and ZBA board members Mark Tomko, acting chairman, Eugene Burns, Tom Smallcomb and Clayton Ellis were present. All Board members confirmed that they had visited the site and were familiar with the character and nature of the area and this property and the application. In addition, Mr. Barry Isle, a neighbor was also in attendance.

Two new letters were received since the last meeting and were read into the record. The first, a letter from Wing F. Wong, PE from WW Engineering, PLLC Brooklyn, NY addressed preliminary sewage studies and 4 questions raised by the Board at last months meeting. The letter estimated the water usage demand to be 28,500 gallons per day and sanitary waste to the city sewer at 19,995 gallons per day. They also expressed 1; that when calculating daily water usage, it is never assumed that all fixtures would be flushed at the same time and the calculations above are estimated on a diversity factor based on the anticipated building usage and anticipated peak demand, 2; Based on the site utility survey, all sanitary waste from the building is routed to underground sewage ejector pump/pit and then pumped to an existing Old Vestal Road sewer Line with which size needs to be verified by the Town and that the existing pump and pipe are sufficient to handle the new anticipated discharge flow, 3; The grinder which is required as part of the overall sanitary system is to reduce all solid waste to a consistency to facilitate pumping to the street sewer, and 4; the anticipated usage is based on anticipated building usage and occupancy and are not comparable between a nursing home and residential facility.

A memorandum to the Board from Vern Myers, Vestal Town Engineer was also read into the record regarding the 860 Vestal Road housing project. He reviewed the sanitary sewer collection system in the area is a relatively small service area and flow is collected and conveyed to the lift/pump station at the corner of River Road and Old Vestal Lane and is then pumped to Vestal Road East of the project through a 6" force main. Based on his discussions with the Town Sewer Supervisor and Department employees with direct knowledge of the system he offered; 1. there have been no recent complaints or concerns expressed to the department regarding sanitary plugs or backups to the property owners within the service area; 2. he had personally visited the area when the dept. was inspecting the service lines and reported one small area in the line in need of repair and one abandoned sewer lateral at 860 Old Vestal Road that was plugged with root intrusion, however, the system was overall in fair to good condition and there was no evidence of blockages or flow impediments, 3. the lift/pump station is noted that the Town Sewer Department is devoting more time than normal at this station, especially during COVID, as an abundance of cloth, textiles, and disposable wipes do not break down before being caught at or clogging the pump station.; Based on this, it is the Town Engineers opinion that the 860 Old Vestal Road development will not adversely affect or overload the Town sanitary system as designed. It is also noted that the Town continues to evaluate and monitor the facilities and is taking proactive measures to address improvements to service and that the River Road pump station is currently being evaluated for upgrades and improved grinder pumps to better manage solids, clogging and reduce the need for manual cleaning by dept. staff.

Mr. Isles was also asked if there were any other concerns of the neighbors other than the sewage issues, and he did express concerns about the traffic flow and ingress/egress to the site. His and others neighbors concerns are regarding the use of Old Vestal Lane for ingress as opposed to using just Old Vestal Road. The preliminary plan approved and verified by the applicant was

ingress on Old Vestal Lane and egress onto Old Vestal Road. Conversation about this ensued and it would be in the best interest of the applicant to look at re-visiting this issue and just having one main entrance/exit on the eastern side of the property on Old Vestal Road as there is room there for that especially since the property at 900 Old Vestal Road is now owned by the applicant. Since the ZBA cannot condition any other Board, and since the project ingress/egress was previously approved by the Planning Board and will not be re-heard by the Planning Board, the applicant's attorney did convey that he would speak with the applicants to review this possibility with them.

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

A 239 l & m submission to and response from the Broome County Department of Planning and Economic Development was reviewed. Since the project had no changes from the 2017 submission, the department was not going to comment or review any further and their negative declaration from 2017 would stand. This would necessitate a super majority vote of the ZBA for approval of the area variances requested.

This is a Type II area variance and the provisions of SEQR do not apply.

A motion was made by Mark Tomko **to grant a 55 unit variance** per Chapter 24, Article IV, Division 2, Section 24-182(b)(1) at 860 Old Vestal Road, (B.C.T.M.P.# 157.58-2-6 to construct 128 dwelling units where 73 are permitted by code as presented to the Board. **Two conditions** were made; **1.** that the dwelling at 900 Old Vestal Road be razed and the property incorporated into 860 Old Vestal Road and this permit be applied for within 6 months of this date and **2.** request that the ingress/egress plans for the project be re-evaluated by the applicants to see if a single ingress/egress point on Old Vestal Road could be put in place to not allow as much traffic on Old Vestal Lane. Tom Smallcomb seconded the motion. A vote was called and:

Therefore in consideration of the above, and in balancing the factors of 1.) Change in character of locality; 2.) Alternate methods to achieve what the applicant desires; 3.) The degree of variance sought; 4.) Effect on the physical conditions existing in the locality; and 5.) Any self-created difficulties, the request for a **55 Unit variance** is hereby **GRANTED** by a 4-0 vote. The vote was unanimous and the votes were cast as follows: Acting Chairman, Mark Tomko-AYE, Thomas Smallcomb-AYE, Eugene Burns-AYE and Clayton Ellis-AYE.

A second motion was made by Mark Tomko **to grant a 15' +/- height variance and one (1) story variance** per Chapter 24, Article IV, Division 2, Section 24-182(c)(1)(a) at 860 Old Vestal Road, (B.C.T.M.P.# 157.58-2-6 to construct a four (4) story building where 3 stories are permitted by code as presented to the Board.

Therefore in consideration of the above, and in balancing the factors of 1.) Change in character of locality; 2.) Alternate methods to achieve what the applicant desires; 3.) The degree of variance sought; 4.) Effect on the physical conditions existing in the locality; and 5.) Any self-created difficulties, the request for a **15' +/- variance and one (1) story variance** is hereby **GRANTED** by a 4-0 vote. The vote was unanimous and the votes were cast as follows: Acting Chairman, Mark Tomko-AYE, Thomas 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: November 17, 2020

DEBRA E WALLACE
Notary Public - State of New York
No. 01WA6405232
Qualified in Broome County
Commission Expires 03/02/2024

ZONING BOARD OF APPEALS
OF THE TOWN OF VESTAL

BY: 
Mark Tomko, Acting Chairman