



**TOWN OF VESTAL
ZONING BOARD OF APPEALS**
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ZBA BOARD MEMBERS:
Chairman: Mark Tomko
Members: Clayton Ellis
Jerry Schultz
Eugene Burns
Patrick McPherson
Alternate: John Taylor
Attorney: Matthew Butler

**TOWN OF VESTAL
ZONING BOARD OF APPEALS**

In the Matter of the Application of

Alexis Gottlieb/Bark and Breakfast
685 Underwood Road
Vestal, NY 13850
B.C.T.M.P. # 222.04-1-11

DECISION

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

At a meeting duly scheduled for October 26, 2023 the Zoning Board of Appeals of the Town of Vestal held a public hearing at 6:45 PM to consider the application of Alexis Gottlieb, regarding premises situate at 685 Underwood Road, Vestal, NY 13850, (B.C.T.M.P.# 222.04-1-11, for a Use Variance as required by Chapter 24, Article IV, Division 1, Section 24-151, Permitted Uses, of the Code of The Town of Vestal, Broome County, New York (Zoning Ordinance), pertaining to a property use that is not listed/permitted in the RR, Rural Residence Zoning District. Appearing in support of the Use Variance request is Alexis Gottlieb and Scott Gottlieb.

This is a continuation of the Public Hearing that was tabled from October 12, 2023. Proof of publication of the notice of the hearing in the Town Crier was submitted. The applicant had tabled her request at this meeting so that she could return with the required information to meet the four (4) tests for a Use Variance.

The applicant has returned along with her attorney, Scott Gottlieb and provided new Buyer's Affidavit of Hardship, Realtor's Affidavit of Marketability and Seller's Affidavit of Hardship along with her application, letter of proposal, property map, GIS property detail summary, and a copy of synopsis decision from October 12, 2023 meeting. The applicants took the Board members through their request.

Board members present, Mark Tomko, Chairman, Clayton Ellis, Eugene Burns, John Taylor and Jerry Schultz. 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 Use Variance to use the residence at 685 Underwood Road for a short-term dog boarding business where this type of use is not permitted. Applicant states that the business model is to not kennel the dogs, but to allow them to stay in the house, on property where they are cared for like they live at home. She has run this business in Endwell as Bark and Breakfast and has approximately 120+ families that utilize this service on occasions for weekly boarding. There will be a fence installed out back to contain the dogs and let them exercise and do their business, but no outside boarding or kennels will be used. Applicant states this is her sole income and business. She works closely with the dogs to ensure they do not bark, howl or make noise and if they do, she brings them to an inside room where she employs various techniques to quiet them. Also, all dogs are brought indoors by 9:00 PM.

The applicant states that she needs more space for her business as she typically cares for 5-7 dogs at a time in addition to her own. Her packet outlines her reasoning for this location and her cleaning and caring procedures. Applicant states she is needing to re-locate out of the Town of Union as her current location is not zoned for this type of business. Her financial hardship is that this is her sole source of income, and if she cannot get a use variance her business would be forced to close and this would also create a financial hardship to the seller due to the amount of work that needs to be done to the house and time frame. She states the uniqueness of her business applies to her and the business and not the rest of the neighborhood. Since the house is in a RR, Rural Residence district and sits on nearly 6 acres with most neighbors more than 500 feet away the remoteness of this would not alter the character of the neighborhood.

The Seller's Affidavit from H&R Real Estate Holdings outline the fact they purchased the home as an investment property in April 2023 and after owning it for a few months, the amount of repairs, approx. \$55,000 plus Radon Gas mitigation, they decided to list it for sale. Alexis' bid for the house is the only offer to date and they will be caused hardship if the variance is not approved as they cannot put the time and money into the property that it needs to sell it, that the current mortgage rates, time of the season with Winter approaching and selling season slowing down, and incurring holding costs for a longer period of time. The Realtor's Affidavit alleges many of the same points previously noted above.

The meeting was opened to the public. Kathy Pavlikof 713 Underwood Road read a letter to the Board she had composed opposing the granting of the variance. Her comments concerned the effect of this business on flora & fauna, noise from the dogs barking and effects of the dogs on wildlife and wildlife on the dogs. Doug Gausman of 719 Underwood Road objected to the variance as this is a nice residential setting and no business' are needed in it. Kristin McCann of 739 Underwood Road also spoke in opposition to the variance for the same reasons and lives 3 houses down and can hear a neighbors generator turn on every Saturday morning so this would be heard. The public portion of the meeting was closed as no members of the public wished to be heard.

Chairman Mark Tomko read to the applicant and the public in attendance the permitted uses of the property that are allowed by code or with permission from the Town Board or Zoning Board and that Dog Boarding was not one of them. He also read the list of Customary Home Occupations typically allowed, and this did not fall in that category either. Eugene Burns also noted that the

code spells out that Home Occupations NOT permitted specifically state “Animal training, treatment, boarding and care” as the first sentence.

Therefore in consideration of the above, and in balancing the factors of; 1.) Property is incapable of earning a reasonable return on initial investment if used for any of the allowed uses in the district; 2.) The property is affected by unique, or at least a highly uncommon circumstance; 3.) The variance, if granted, will not alter the essential character of the neighborhood; 4.) The hardship was not self-created;

A motion was made by John Taylor to **approve a Use Variance to allow a dog boarding business, Bark and Breakfast** as per Chapter 24, Article IV, Division 1, Section 24-151, Permitted Uses at B.C.T.M.P. # 222.04-1-11 aka 685 Underwood Road, Vestal, NY 13850 as discussed and presented to the Board.

The motion was seconded by Jerry Schultz. A vote was called and:

The request for a **Use Variance** is hereby **Denied** by a 0-5 vote. The vote was unanimous and the votes were cast as follows: Chairman, Mark Tomko-NAY, Clayton Ellis -NAY, Eugene Burns-NAY, John Taylor- NAY and Jerry Schultz-NAY .

The Code Enforcement Officer is herewith authorized to take the necessary action to carry out the provisions of this Decision, and to ensure that the construction is performed to the requirements of the Code.

Dated: October 30, 2023

ZONING BOARD OF APPEALS
OF THE TOWN OF VESTAL

BY: 
Mark Tomko, Chairman