



**TOWN OF VESTAL
ZONING BOARD OF APPEALS
605 Vestal Parkway West
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ZBA BOARD MEMBERS:

Chairman: Mark Tomko (acting)
Members: Clayton Ellis
Tom Smallcomb
Thomas Jackson, Jr.
Eugene Burns
Alternate: John Taylor
Attorney: Matthew Butler

**TOWN OF VESTAL
ZONING BOARD OF APPEALS**

In the Matter of the Application of

4505 Vestal, LLC
4501 Vestal Parkway East
Vestal, NY 13850
B.C.T.M.P. # 159.10-1-14

DECISION

For a Use Variance as required by Chapter 24, Article IV, Division 1 Section 24-152 Permitted Uses of the Code of The Town of Vestal, Broome County, New York
(Zoning Ordinance)

At a meeting duly scheduled for September 23, 2021 the Zoning Board of Appeals of the Town of Vestal held a public hearing to consider the application of 4505 Vestal, LLC, regarding premises situate at 4505 Vestal Parkway East, Vestal, NY 13850, (B.C.T.M.P.# 159.10-1-14 for a Use Variance as required by Chapter 24, Article IV, Division 1, Section 24-152 Permitted Uses 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 “C-2”, Community Business Zoning District. Appearing in support of the Use Variance request is the applicant Prabhjot Pannu, Manager 4505 Vestal, Inc. and Nathan VanWhy, 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 the application was read. The applicant submitted a package outlining the request including a summary letter, a letter from the architectural firm Chianis & Anderson, a letter from Cushman & Wakefield Pyramid Brokerage Company a P & L comparison, a completed Short Environmental Assessment Form, a property map, preliminary construction plans along with a copy of the application.

In addition, numerous Emails were received in response to the 239 L&M review for this parcel from Broome County Department of Planning and Economic Development, Broome County Health Department, Binghamton Metropolitan Transportation Study, NYS DOT, Region 9, Broome County Commissioner of Public Transportation, and Broome County Department of Public Works, Engineering Division. These Email responses were summarized and read into the record.

Board members present, Mark Tomko, Acting Chairman, Eugene Burns, 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 Use Variance to allow for the construction of 12 single bedroom "Professional Housing" apartments 4505 Vestal Parkway East. The applicant states that the property was purchased in 2016 and the rents at that time barely covered the expenses as the tenants were not responsible for utilities, maintenance, snow removal or other expenses. The Building was under lease by Jacobs Engineering and the City of Binghamton for work related to work at the sewage treatment plant, a personal trainer and a mortgage broker. Each of these tenants vacated the property at the end of their respective leases. Since 2018, the applicant has utilized Trish Grassi with Pyramid Brokerage Company in an attempt to find suitable tenants or buyer for the property. With a lack of any interest, the applicant has explored other options and potential uses for the property. In consultation with the architectural firm Chianis & Anderson, Ms. Grassi and due to a change in the commercial/industrial market conditions and specific problems associated with this property as a commercial use, the applicant is looking to convert the property to its original use as a multi-residential facility which would be appropriate for the location and allow a reasonable return on investment.

The applicant states that they cannot realize a reasonable return on this property for any of the allowed uses based on the significant cost associated with converting the building to any of these uses. A letter from Chianis & Anderson outlines the issues and the costs associated with upgrading and converting the building to allow for any of the allowable uses. A letter from Trish Grassi of Pyramid Brokerage outlines that there is no market for most of the uses allowed, and the potentially viable market for general/professional office use, medical clinics, wholesale business or service, planned shopping center restaurant, commercial recreation facilities, hotel/motel, automobile sales, gas station, light manufacturing, processing, fabricating or other light industrial uses, there has been little to no interest in this property. National retailers find this to not be an ideal location, Quick Service Restaurants (QSRs) find the property does not have enough parking and access to/from the Parkway. The floor configuration and lack of ADA accessibility, lighting ceiling heights and more prevented the very few prospects to not lease the property. Despite heavy marketing and talking to prospective tenants there has been no serious interest or takers. The applicant states that due to the unsuccessful attempts to find tenants or a buyer, the high cost of renovation/demolition, lack of access and visibility, inadequate parking/poor internal traffic flow, proximity to the Joint Sewage Treatment Plant, internal floor configuration and the availability of other commercial/office/industrial space in the Greater Binghamton area have all been cited as issues with the property that render it unsuitable for the potential uses.

The applicant also states that the alleged hardship to the property in question is unique and does not apply to a substantial portion of the district/neighborhood as the property is triangular in shape and tapers to a point bordered by Old Vestal Road and the Vestal Parkway which makes it unsuitable for construction and the issues cited by potential tenants/buyers are created by this shape. As such, the shape of the property is unique and does not apply to other properties in the district/neighborhood.

The applicant states that the use variance, if granted will not alter the essential character of the neighborhood since the neighborhood surrounding the parcel is a mix of residential, industrial, commercial, educational, and recreational uses and that the inclusion of a multi-family residential building within the mix will not alter the neighborhoods character.

The applicant states that the hardship was not self-created since they purchased the property in 2016 and that since then, the market for commercial and office leasing has become extremely favorable to the tenant and many empty storefronts and office buildings can be found within the greater Binghamton area. This eventually drives down the potential rents or sale price and the access/visibility/internal traffic issues at this site clearly puts the property at a clear disadvantage, and as such, the changes in the market was not self-created.

Upon questioning from the Board members, the applicant stated that she bought the parcel in 2016 as they owned the property next door and while the tenants rent barely covered the expenses they hoped to keep and attract more. Since there are no plans to add to the building size or change the footprint, and with the access issues, they cannot attract anyone. The plan to convert back to residential use was questioned and the Board asked Code Enforcement Officer Lincoln Ellis if the building was ever residential. As far as any records indicate in his search, the building was constructed in 1968 as commercial and has remained that way and no records indicate otherwise. The applicant was questioned as to the number and size of the units, with each being one bedroom and 12 units in total. Cost of renovation was estimated to be about \$75,000 per unit. The applicant could also not comment on questions on the cost to renovate to other commercial uses and the potential rent for each.

The Board members also questioned the applicant to the lack of a true site plan, and it was stated that if they received approval of the use variance request they would comply with all requirements for the conversion. The question of future variances might be needed, but since the building footprint or addition to height is not going to occur, that the need for any such area variances would most likely not be required as there is plenty of parking currently. As this is a use variance request, the Board asked for more specific details on what marketing was done, the number of potential tenants/buyers, what other uses listed showed any interest, what the rent request rate was vs. what the market actually, or in other terms, they asked for the market analysis. The applicant thought that the letter from Pyramid Brokerage had outlined some of this. The Board also questioned the financials submitted and wondered why they are seeking a use variance when the financials show improving position as evidenced by decreasing losses? The applicant states that they currently rent some of the parking to themselves from the adjoining property they own at 4500 Vestal Parkway East to help offset the losses on the parcel. Since there was no market analysis provided and better financials were not provided, the Board was questioning the proof necessary to show a reasonable return on the investment.

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

After the public portion of the meeting was closed, the Board reviewed the comments and materials presented. Acting Chairman Tomko was vocal in needing more information as to see proof of the need for a use variance. He also asked the applicant if they had approached the Town Board for a rezoning of the area from C-2, Commercial to a Transitional Neighborhood (TN) zoning since the other properties between Murray Hill Road and East to the top of the hill at the turn around would

also be in the same situation. The applicant and her attorney stated that they had not done this and would take it under consideration, but the uniqueness of this property should still stand for itself. In addition, the comments from the 239 L&M review, while not a negative declaration, did bring up many concerns and issues. These would need to be addressed by the Planning Board should the use variance request be approved.

Since the members of the Board present numbered three (3) which qualified as a quorum, the applicant was asked if they wanted to request a continuance or a motion and a vote since they would need an affirmative vote of at least three (3) to have the use variance granted. The applicant's attorney conveyed with the ZBA attorney Matthew Butler about this need and they both agreed three (3) affirmative votes would be needed. The dates of future ZBA meetings were reviewed and the next scheduled meeting would be held on October 14, 2021 and they could be placed on that agenda. The applicant agreed to this date and requested that the ZBA table the hearing until October 14, 2021. Clayton Ellis made a motion to table the hearing and this was seconded by Eugene Burns. The motion was called and all three members of the Board present voted AYE, so the motion was passed and the hearing was tabled to October 14, 2021.

The hearing was reconvened on Thursday, October 14, 2021 with Board members Mark Tomko, Clayton Ellis, Eugene Burns, and Thomas Jackson present. Mr. Jackson was questioned as to whether he has been to the site and has reviewed all previous materials presented, and Mr. Jackson affirmed that he had and was able to be part of the hearing. The applicant Prabhjot Pannu appeared with attorney Nathan VanWhy, along with Patricia (Trish) Grassi from Pyramid Brokerage and Greg Chianis and Kim Leonard from Chianis & Anderson architects. Ms. Grassi presented a full Market Analysis for this property and area as well as the Binghamton area in general. She described her marketing efforts over the years and the condition of this property in relation to other commercial/retail properties and the interest from various potential tenants. Mr. Chianis described the condition of the building and what it would take to make it useable for various tenants in terms of construction and costs for potential uses. A question and answer period ensued with Board members asking many questions of the condition of the property, comparisons to other areas and properties along the Parkway and the associated costs and how that would then compare to other properties in terms of today's rental market. It was pointed out that the market has changed dramatically in the past year or so due to the shift in retail and with COVID-19 now affecting the office sector with the ability to work from home.

A more informative financial breakdown of expenses and potential incomes was presented and in combination with questions from the Board and answers from Ms. Grassi and Mr. Chianis most Board members seemed satisfied with the responses and the completeness of the materials.

Therefore in consideration of the above, and of the four (4) factors required of; 1.) Whether the property is capable of earning a reasonable return on investment if used for any of the allowed uses in the district; 2.) Whether the property is being affected by unique or at least highly uncommon circumstances; 3.) Whether 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 Clayton Ellis to grant a **Use Variance** to B.C.T.M.P.# 159.10-1-14 as required by Chapter 24, Article IV, Division 1, Section 24-152 aka 4505 Vestal Parkway East, Vestal, NY 13850 to **allow the residential use for a multi-family residence in a C-2 Commercial Business Zoning District** as presented to the Board. The motion was seconded by Eugene Burns. A vote was called and:

The request for a **Use Variance** is hereby **GRANTED** by a 4-0 vote. The vote was not unanimous and the votes were cast as follows: Acting Chairman, Mark Tomko-AYE, Thomas Jackson-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 23, 2021

ZONING BOARD OF APPEALS
OF THE TOWN OF VESTAL

BY: *Mark Tomko*
Mark Tomko, Acting Chairman

*Subscribed and sworn to before me this
19th day of November, 2021*

Carolyn L. Almy

Notary Public - State of New York

No. 01AL6422753

Qualified in Broome County

Commission Expires 09/27/2025