



**TOWN OF VESTAL  
ZONING BOARD OF APPEALS**  
605 Vestal Parkway West  
Vestal • New York • 13850-1486  
Telephone (607) 786-0980 Ext. 201  
Fax (607) 786-0984

**ZBA BOARD MEMBERS:**  
Chairman - Mark S. Johnson  
Mark Tomko  
Tom Smallcomb  
Paul Houle  
George Gerner  
Attorney - Matt Butler, ESQ.  
Alternate: Eugene Burns

---

**TOWN OF VESTAL  
ZONING BOARD OF APPEALS**

In the Matter of the Application of

**FOR MY CHILDREN, LLC**

**DECISION**

For variances as required by Chapter 24, Article II, Division 4, Section 24-62; and Article IV, Div. 2, Section 24-182 (b) (1) and (c) (1) (a) and Chapter 24, Article IV, Division 3, Section 24-206 (d) of the Code of the Town of Vestal, Broome County, New York (Zoning Ordinance)

RECEIVED  
SEP 12 2016

TOWN CLERK'S OFFICE

---

At a meeting duly scheduled for April 28, 2016 and continued to June 23, 2016 and July 21, 2016, the Zoning Board of Appeals of the Town of Vestal held public hearing to consider the application of For My Children, LLC, regarding premises situate at 3141, 3149 and 3145 Burriss Road, (tax map nos.: 158.15-1-23; 158.15-1-21; 158.15-1-22.2) for variances as required by Chapter 24, Article II, Division 4, Section 24-62; and Chapter 24, Article IV, Div. 2, Section 24-182 (b) (1); Chapter 24, Article IV, Div. 2, Section 24-182 (c) (1) (a) and Chapter 24, Article IV, Division 3, Section 24-206 (d) of the Code of the Town of Vestal, Broome County, New York (Zoning Ordinance), pertaining to constructing a five story building greater than 40 feet in height and not meeting the minimum setback required by the ratio for a building greater than 35 feet in height. Applicant is further requesting a parking space variance to allow for the creation of 69 parking spaces when 92 are required for the proposed 46

## TOWN OF VESTAL ZONING BOARD OF APPEALS

dwelling units, thereby requiring a 23 space variance. Lastly, the applicant is seeking permission to allocate 2000 square feet of lot area per dwelling unit as opposed to the required 300 square feet.

Appearing in support of the application was Armand Cucciniello of For My Children, LLC; Sarah Grace Campbell, Esq. of Hinman Howard & Kattell as counsel for the applicant; Christopher Stastny of Griffith Engineering (project Engineer) and Laura Intscher, the project architect. Board Members Paul Houle, Mark Tomko, George Burns and Mark Johnson stated that had visited the site and were familiar with the property. Submitted in support of the application was a letter from the project engineer explaining the need for the requested relief, plot plans and elevations, photos and drawings. The Board also received many letters and a signed petition from neighboring residents in opposition to the variance requests.

After due

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

The applicant is desirous of constructing a new five story apartment building in this apartment complex. Per Code, this proposed building, and the resulting increase in tenants and lot coverage, required several variances. In sum, the applicant is requesting permission to increase a non-conforming use; a variance to permit less than the required minimum lot area for a multiple residence; a variance to permit a 5 story building when the Code only permits a three story building, and rear and side setback variances.

The applicant, through counsel and their engineers and architect, went through the proposed plans and explained in detail. In short, the applicant believes that constructing a single five story building, rather than several three story buildings, would be less obtrusive on the neighborhood. The plans indicate that the proposed new building would be located at the lower end of the complex,

## TOWN OF VESTAL ZONING BOARD OF APPEALS

and would actually be less visible to the neighbors than three story building built closer to Burris Road. The record in the case is the entirety of testimony and exhibits are too great to examine each, with any great detail. Suffice it to say, that the testimony and exhibits are all made part of the record in this case and are available for review. The applicant put forth evidence in support of each variance required. However, of particular note was the presence of representatives from the Vestal Fire Department who, throughout the proceedings, expressed their concern about the proposed building height and location. Chief Rose submitted a detailed letter on behalf of the Department in opposition to the variances. Of utmost concern to the Department was the size (height) of the building and the proposed location within the lot. The concern was essentially over firefighter safety if required to respond to a call. The applicant brought in their own fire safety expert to refute or respond to the Department's concerns. It is not lost on this Board that the Fire Department responsible for responding to a fire call is dead set against these variances being granted.

The hearing was opened for public comment, and the floodgates opened. The hearing room was full of local residents wanting to be heard in opposition. Suffice it to say that not one resident appeared to speak in favor of the application. The names and particular comments of the individuals that appeared to voice their opposition are part of the record at the Zoning Board of Appeals Office. The Board also received signed petitions of property owners, all opposed to the variances. Upon the conclusion of the public comment period and, throughout the proceedings, Attorney Campbell commented that the applicant was trying to be cognizant of the neighbors in making the proposal before the Board. She advised, and this Board concurred, that this neighborhood is zoned for multiple residences and the owners of the subject property could place several three story buildings on the premises without the need for any variances. That plan would

**TOWN OF VESTAL  
ZONING BOARD OF APPEALS**

probably be worse for the residents insofar as it would be more obtrusive to the neighbors in terms of their view of the new building(s). At the conclusion of the hearing, several Board members expressed their concerns with the proposed variances. Eugene Burns stated that these variance requests were too substantial. Chairman Johnson indicated that he was torn, but that he thought that the variances were too substantial. Mark Tomko concurred on the substantial nature of these variances, but also advised that the applicant could just place 2-3 buildings on that lot without the need for variances, thereby probably making the neighbors even more upset.

A discussion was had with the applicant and their counsel with respect to any motions to be made. It was agreed that the height variance was controlling and, as they indicated, without the height variance being granted, the remaining variances were moot.

As such, a motion was made by Mark Johnson to deny the applicant's request for a building height variance at 3141, 3149, 3145 Burris Road, as presented. Paul Houle seconded that motion. A vote was called and after considering the

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 building height variance pursuant to Chapter 24, Article IV, Division 2, Section 24-182 ( c ) (1) (a) is hereby DENIED. The Board voted as follows: Chairman Johnson-Aye; Mark Tomko-Aye and Paul Houle-Aye and Eugene Burns- AYE. The variance was unanimously **DENIED** by a vote of 3-0.

**TOWN OF VESTAL  
ZONING BOARD OF APPEALS**

The remaining variance requests were withdrawn by the applicant.

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

Dated: August 30, 2016

ZONING BOARD OF APPEALS  
OF THE TOWN OF VESTAL

BY: 

Mark Johnson-Chairman