



**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 - Cynthia Manchester,
ESQ.**

Alternates: Eugene Burns

John Taylor

Jennifer Kakusian

In the Matter of the Application of

FEINBERG-SMITH ASSOCIATES, INC.

**for variances as required by Chapter 24; Article IV,
Division 2, Sections 24-182(b)(1)(a), 24-182 (c)(1)(a),
24-182(c)(2)(a), and Division 3, Sections 24-201(a)**

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**TOWN CLERK
VESTAL, NY**

DECISION

At a meeting duly scheduled for November 10, 2016, and continued to December 15, 2016 and February 9, 2017, the Zoning Board of Appeals of the Town of Vestal held public hearings to consider the application of Feinberg-Smith Associates, Inc. regarding premises situate at 600 Country Club Road, Tax Map #159.19-2-1 (the "Country Club Road" property) and 500 Plaza Drive, Tax Map #159-19-1-2 (the "Plaza Drive" property) (collectively referred to as the "Premises") for variances of Chapter 24; Article IV, Division 2, Sections 24-182(b)(1)(a), 24-182 (c)(1)(a), 24-182(c)(2)(a), and Division 3, Sections 24-201(a) and 24-206(d) of the Code of the Town of Vestal, Broome County New York for the construction of various apartment buildings on the Premises.

Applicant initially requested a variance:

- (a) reducing the minimum lot size established by §24-182(b)(1)(a) of three thousand (3,000) square feet per family for two and three story multi family dwelling structures;

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(b) increasing the maximum height of principal buildings established by §24-182(c)(1)(a) of forty (40) feet;

(c) reducing the minimum living area per family established by §24-182(c)(2)(a) of seven hundred fifty (750) square feet;

(d) reducing the required parking space size established by §24-201(a) from nine and one-half (9 ½) feet in width and twenty (20) feet in length; and

(e) reducing the number of parking spaces established by §24-206(d) which requires two (2) off street parking spaces per unit.

Appearing in support of the application was Jeffrey Feinberg on behalf of Feinberg-Smith Associates, Inc., Matthew R. Napierala, P.E. (Project Manager), Jason K. Demarest Architecture (Project Architect), and Alan Pope, Esq. as counsel for Applicant. Submitted in support of the application was a Project Narrative with accompanying site plans and maps explaining the Applicant's request for relief. The Board also received approximately three emails and/or letters from owners of various commercial establishments (other than the Applicant) in support of the Applicant, and a letter dated February 8, 2017 from the Vestal Fire District indicating that the Applicant had addressed fire safety concerns raised by the project.

Board members Mark Johnson, Mark Tomko and Eugene Burns all visited the site and are fully familiar with the Premises.

By letter dated February 9, 2017, Applicant's counsel, Alan Pope, Esq., withdrew Applicant's request for a variance pertaining to the height of the proposed project buildings and

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further withdrew Applicant's request for a variance in the size of the parking lot spaces.

Accordingly, this Decision pertains only to the three remaining requested variances.

Currently, the Country Club Road property is improved with three, three-story buildings containing a total of 95 authorized units, consisting of 1 and 2 bedroom apartments. The rear of the property is buffered by woods and a swampy area, immediately behind which consists exclusively of single family homes on Deerfield Place and Midvale Road.

The Plaza Drive property is improved with five, two-story buildings containing a total of 90 authorized units, also consisting of 1 and 2 bedroom apartments. Similarly, the rear of the Plaza Drive property is buffered by woods, though to a smaller extent than the Country Club Road property, immediately behind which, and at a reduced elevation, are located exclusively single family homes along Manchester Road.

Collectively, the two parcels consists of 185 authorized units¹ which currently house 222 residents, located on a combined total site area of 451,282 square feet². While the units have been leased primarily to graduate students at Binghamton University, which is approximately a 10 minute walk from the Premises, Applicant is not limited to leasing only to students at the University.

Applicant's proposed expansion would add an additional 224 apartments, which would potentially add an additional 340 residents, and would also require additional buildings to the two properties.

The three remaining variance requests would:

¹ Applicant was authorized to have 185 units among the two parcels, but it appears that storage space has been re-configured to create a total of 192 existing units.

² Of note, the Premises already exceed the permitted density limitations.

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(1) reduce the minimum lot size more than 75% from 3000 square feet per unit to 722 square feet per unit on the Country Club Road property, and reduce the minimum lot size more than 38% from 3000 square feet per unit to 1849 square feet per unit on the Plaza Drive property. Given that the existing lot size is 10.56 acres and the minimum lot size is a function of the number of units, Applicant's project would, if a variance was not sought, require more than a doubling of the size of the parcels, specifically, an additional 11.57 acres.

(2) reduce the minimum living space of 750 feet per unit to 475 feet, a reduction of more than 35%, for the additional 180 proposed 1 bedroom apartments; and

(3) reduce the number of parking spaces from 818 parking spaces (2 per unit) to 309 spaces, a variance of 509 spaces, or a more than 60% reduction in the required number of parking spaces.

In order to accommodate the large number of persons anticipated to attend the hearing on November 10, 2016, it was held at Clayton Avenue Elementary School and in excess of 200 persons appeared. The hearing was opened for public comment, and the hearing room was full of local residents wishing to be heard in opposition to the proposed project. 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. In addition, the Board received over 80 emails/letters in opposition to the requested variances, all of which are a part of the record.

The Board members heard from those individuals residing in the immediate vicinity of the Premises. They voiced understandable concerns about the reduction in the buffer zone between the

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proposed project³ and the impact this would have in terms of the residents' privacy and the negative impact upon the residential character of the neighborhood. Residents also advised of concerns of increased pedestrian traffic given Applicant has advised this Board that most of the residents are expected to walk to the University and the area is bereft of sidewalks for safe passage. Other residents were concerned about parking issues, given the large increase in the number of tenants and the reduction in the number of parking spaces sought by the variance.

The Board concurs that the proposed project would alter the existing buffer in such a manner so as to substantially change the character of what is a predominately single family residential neighborhood. As is evident from the maps submitted by Applicant, the wooded buffer areas behind the two parcels would be greatly reduced, negatively affecting resident's privacy and changing the character of the neighborhood- this would particularly impact the homes located on Manchester Road.

Upon the conclusion of the public comment period, and through the proceedings, Attorney Pope commented that the Applicant was trying to be cognizant of the neighbors in making the proposal before the Board. He advised, and this Board concurred, that this neighborhood is zoned for multiple residences and the owners of the subject property could configure the existing buildings in such a manner so as to reduce the number of units within the existing buildings, which would

³ It bears noting that in 1969, when the buildings were first constructed the importance of the buffer zone was reiterated to the developer in order to maintain a balance between the apartments and the surrounding single family residences in the immediate vicinity. Later, in 1986, when the premises were purchased by Mr. Jeffrey N. Feinberg, and leased to Binghamton University for a 10 year period, the University and Mr. Feinberg represented that the existing buffer zones would be maintained and that no trees or shrubs in the buffer zones would be removed nor would vehicle parking be expanded into the buffer zones. Additionally, the University represented that there would be no increases in the number of units, nor the number of bedrooms in each unit. Thus, consistently, there has been recognition of the importance of the buffer zone and density limitations to maintain the character of the neighborhood.

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permit the Applicant to construct additional buildings in similar fashion as to the proposed project without the need for any variances. The Board acknowledges that such a plan would probably be worse for the residents insofar as in lieu of an additional 340 residents which would result if the variances were requested, Applicant could, with substantial modification of the existing buildings, add up to 528 residents without the need for a variance. Thus, it is evident that what Applicant wishes to accomplish can be accomplished in a manner which would not require the substantial variances presently sought.

On February 9, 2017, a motion was made by Chairman Johnson to deny Applicant's request for variances of Section 24-182(b)(1)(a) (Area Variance/Lot Limitations) for the Country Club Road property and the Plaza Drive property, as presented. Chairman Johnson indicated that the Planning and Town Board had clear plans as to how the property was to be developed back in the 1960's, and that maintenance of the existing buffer between the development and residences was important to the character of the neighborhood. Board Member Eugene Burns spoke of this as being a density issue that affected the entire neighborhood. Mr. Burns noted that the Board was a relief valve for zoning restrictions, not for the making of substantial variances and significant density increases. Board Member Mark Tomko expressed his appreciation for the detailed information provided by the Applicant but stated that the proposed project was beyond what was originally intended for the parcel and was too substantial.

The motion was seconded by Mr. Burns. A vote was called and after considering:

1) the change in character locality; 2) the existence of any alternate methods to achieve what the Applicant desires; 3) the degree of variance sought; 4) the effect on the physical conditions existing

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in the locality; and 5) any self-created difficulties, the request for a variance pursuant to Chapter 24; Article IV, Division 2, Sections 24-182(b)(1)(a) is hereby DENIED. The Board voted as follows: Chairman Johnson - Aye; Mark Tomko - Aye; and Eugene Burns - AYE. The request for the variance was unanimously DENIED by a vote of 3-0.

On February 9, 2017, a second motion was made by Board Member Eugene Burns to deny Applicant's minimum living area variance request under Section 24-182(c)(2)(a) regarding the Country Club Road and Plaza Drive parcels, as presented. During discussion, Chairman Johnson noted that the request was very substantial and that should Applicant wish to rent to persons other than graduate students that the size of the apartments would be more akin to dorm rooms and thus, inconsistent with the neighboring residences and multi-family dwellings in the neighborhood. The motion was seconded by Mr. Tomko. A vote was called and after considering:

1) the change in character of the locality; 2) the existence of alternate methods to achieve what the applicant desires; 3) the degree of variance sought; 4) the effect on the physical conditions existing in the locality; and 5) any self-created difficulties, the request for a variance pursuant to Chapter 24; Article IV, Division 2, Section 24-182(c)(2)(a) is hereby DENIED. The Board voted as follows: Chairman Johnson - Aye; Mark Tomko - Aye; and Eugene Burns - AYE. The request for the variance was unanimously DENIED by a vote of 3-0.

On February 9, 2017, a third motion was made by Board Member Tomko to deny Applicant's variance request per Section 24-206 (d) to reduce the number of parking spaces from 818 to 309 at the Country Club Road and Plaza Drive properties. Chairman Johnson indicated that

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the request was extremely substantial. The motion was seconded by Mr. Burns. A vote was called and after considering:

1) the change in character of the locality; 2) the existence of alternate methods to achieve what the Applicant desires; 3) the degree of variance sought; 4) the effect on the physical conditions existing in the locality; and 5) any self-created difficulties, the request for a variance pursuant to Chapter 24; Article IV, Division 3, Section 24-206(d) is hereby DENIED. The Board voted as follows: Chairman Johnson - Aye; Mark Tomko - Aye; and Eugene Burns - AYE. The request for the variance was unanimously DENIED by a vote of 3-0.

Dated: March 22, 2017

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OF THE TOWN OF VESTAL

By: _____

Mark Johnson - Chairman