



**TOWN OF VESTAL
ZONING BOARD OF APPEALS**
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ZBA BOARD MEMBERS:
Chairman - Mark S. Johnson
Mark Tomko
Tom Smallcomb
Paul Houle
George Gerner
Alternates: John Taylor
Jennifer Kakusian
Attorney - Karen McMullen, ESQ.

TOWN OF VESTAL
ZONING BOARD OF APPEALS

In the Matter of the Application of

Asif Shaikh

DECISION

RECEIVED

APR 28 2017

**TOWN CLERK
VESTAL, NY**

For a variance as required by Chapter 24,
Article IV, Division 2, Section 24-180 (b)(3)(a) and Section 24-180 (b)(3)(b)
of the Code of the Town of Vestal, Broome County, New York
(Zoning Ordinance)

At a meeting duly scheduled for October 27, 2016 and continued on April 13, 2017, the Zoning Board of Appeals of the Town of Vestal held public hearing to consider the application of Asif Shaikh, regarding premises situate at 449 Denal Way, (tax map no.: 158.19-3-65) for a variance as required by Chapter 24, Article IV, Division 2, Section 24-181 (b) (3) (a) and (b) of the Code of The Town of Vestal, Broome County, New York (Zoning Ordinance), pertaining to having less than the required front yard setback (a) and side yard setback (b) in an "RA-1", One Family Residence District, a residence built by the applicant to remain where it was built, in violation of the required setback. The house was built approximately 19'-8" from the front property line and 4'-3" feet from the side property line, and the Code requires a setback of 30 feet in the front and 7 feet on the side. Appearing in support of the application was Asif Shaikh, the property owner. Nancy Harrison appeared in opposition.

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

Applicant is requesting this Board's permission to keep the residence where it currently was built. The applicant stated he was the General Contractor and the foundation was built in the wrong spot. It was not realized until after the house was completed. The house sits 19'-8" from the front property line, requiring a 10'-4" variance and it is 4'-3" from the side property line requiring a 2'-9" variance.

The Board received from applicants a survey from August 19, 2016 showing the current location of the house on the lot, and a letter from the applicants regarding the requested variance. The applicant purchased the subject property from Charles and Nancy Harrison.

The hearing was opened to the public, and speaking in opposition to the variances Nancy Harrison informed the board that she had sold the land to the applicant, and when the house was completed and a fence installed on the south end of the property, Mrs. Harrison knew something was wrong. Harrison owns the vacant lot to the south of the applicant's property. She notified the Code Office and they in turn requested a survey to verify the location of the house on the subject premises. When verified, the applicant requested the variances. The applicant and Mrs. Harrison have tried to engage in negotiations for a parcel of land from the adjoin lot, so the applicant will not need the variance.

No one else appeared in the public hearing and that portion of the meeting was closed.

In further discussions with the applicant and Mrs. Harrison, it was agreed that the board would give them time to try and work out a deal for adjoining land to make the side setback variance request to be withdrawn.

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At that time, Chairman Johnson made a motion to adjourn the meeting until December 2017 to give the applicant and Mrs. Harrison time to strike a deal for an adjoining strip of land.

Motion was seconded by Tomko, and a vote taken with Johnson, Tomko, Burns and Gerner all voting aye, none opposed.

On April 13, 2017 the Zoning Board of Appeals reconvened this case with the prior board members present.

Code Enforcement Officer, Mark Dedrick, supplied the Board with several photographs of the property.

Upon questioning the applicant and Mrs. Harrison about negotiations, they have been unable to reach an amicable agreement. The applicant states that Mrs. Harrison wants too much money for a strip of land, and Mrs. Harrison claims that her husband sold the land to the applicant too cheaply and she is trying to not lose any more money. The board mentioned that they could and should continue to negotiate.

Broome County's 239, l and m review, was not necessary and as this is an area variance, SEQR is not required.

Board members Mark Johnson, Chairman, Mark Tomko, George Gerner and Eugene Burns stated that they had visited the site and were familiar with the character and nature of the area.

A motion was made by Mark Johnson to deny a side yard variance of 2'-9" per section 24-180 (b)(3)(b) and to deny a front yard setback variance per section 24-180 (b)(3)(a) of 10'-4", to allow the house to stay where it currently is placed on the property. Mark Tomko seconded that motion.

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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 2'-9" +/- side yard variance and a 10'-4" +/- front yard variance is hereby **DENIED** by a **4-0** vote.

The application was unanimously **DENIED**. The votes were cast as follows: Chairman, Mark Johnson-AYE, Mark Tomko-AYE, George Gerner-AYE, Eugene Burns-AYE.

The Code Enforcement Officer is herewith authorized to take the necessary action to carry out the provisions of this Decision.

Dated: April 27, 2017

ZONING BOARD OF APPEALS
OF THE TOWN OF VESTAL

BY: 

Mark Johnson, Chairman