



**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  
Attorney - Matt Butler, ESQ.  
Alternate: Eugene Burns

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TOWN OF VESTAL ZONING BOARD OF APPEALS

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In the Matter of the Application

of

The Beck Group, LLC

DECISION

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

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At a meeting duly scheduled for October 27, 2016, the Zoning Board of Appeals of the Town of Vestal held public hearing to consider the application of The Beck Group, LLC., regarding premises situate at 2508 Vestal Parkway East, (tax map no. 158.14-1-5) for an Interpretation of the classification of the proposed use (retail vs. restaurant), and, contingent on that interpretation, a use variance for a portion of the subject property as required by Chapter 24, Article IV, Division 1, Section 24-152 of the Code of the Town of Vestal, Broome County, New York (Zoning Ordinance) pertaining operating a "Tom & Chee" in a "TN", Transitional Neighborhood District.

Appearing on behalf of the applicant were Cathy Cornelius (principal of the applicant LLC), Ethelyn Enos and attorney, Richard Aswad, Esq.

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

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The applicant is the owner of a multi-unit building on the Vestal Parkway. They are desirous of leasing a portion of the building to “Tom & Chee”, which is an establishment that sells sandwiches and soups on an eat in and take out basis.

The applicants provided the Board with a letter explaining their requests, a company profile of “Tom & Chee”, menu and floor plan. Letters of support were submitted by applicant’s other tenants at that location, Metro Mattress and Southern Tier Dance. At the outset of the hearing, Board member Mark Johnson, Chairman, Eugene Burns, Thomas Smallcomb, George Gerner and Mark Tomko stated that they had visited the site and were familiar with the character and nature of the area.

The first issue for the Board to determine is whether this proposed use is retail or restaurant.

The applicant provided evidence that the proposed space is on the east side of the building and would take up approximately 1/3 of the total building. There is an unimproved lot next to this property and to the South of the building, there is a densely populated multi-residence district. The other suites at the property are occupied by Metro Mattress and Southern Tier Dance. Applicant submitted that 60% of customers to this business would be take out. Their hours of operation would be respectful to the neighbors and there would be no real increase in noise or traffic. People choosing to eat at the establishment would be there on average for 20 minutes. There would be no deep fryers or cooking smells emanating from the location, as the food is cooked with a steam chamber. The interpretation issue was opened to the public for comment.

Ronald Travis, of the Evergreen Co-op stated that the parkway causes a lot of noise, but so long as no alcohol is served at the proposed site, he had no issue with it. Paul Pool, Esq., attorney for the westerly neighboring property owner, Steven Sedor, stated that this interpretation is obvious

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in that the proposed use is a restaurant and not retail sales. Rick Frisbee asked if the Code ever defined the term “restaurant” and the reply was that it has not.

After hearing no other public comments with respect to the interpretation issue, the public portion of that hearing was closed.

After a brief discussion, a motion was made by Thomas Smallcomb to interpret that the proposed use was that of a restaurant and not a retail establishment based upon the information present to the Board. Eugene Burns seconded that motion. A vote was called and the motion was granted by vote of 5-0. The proposed use was interpreted to be a restaurant.

The next issue before the Board was the request for a use variance by the applicant. The Board read through the requirements to be met by an applicant requesting a use variance. 1) Is the property unique; 2) is the applicant able to receive a reasonable return on his investment; 3) the character of the neighborhood and 4) whether the hardship necessitating the variance was self-created. The applicant went through each element and presented their proof in support. In essence, the applicant presented financial data to prove that the “T-N” zoning has caused unnecessary financial hardship to the applicant. They submitted the rental history and the misfortune of losing their initial tenant to bankruptcy. Subsequently, the suite was leased to Hidi Ochai at a much-reduced rental rate. The suite is now vacant and the applicant has indicated that all of the interested parties have been restaurant establishments. They do not generate enough rent to cover their mortgage, taxes and build out expenses. They presented that there is a car wash just up the parkway and there is a Starbucks 425 feet away. The letters from Metro Mattress and Southern Tier Dance support the use variance and they indicated that there would be no parking or other issues.

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This Board is in possession of Broome County's 239 1 and m review. Other than the Dept. of Health's statement that a food vendor permit would be required, there were no County wide concerns indicated.

The hearing regarding the use variance was then opened for public comment. Paul Pool, Esq. again requested to be heard on behalf of his client, Steven Sedor, who owns 105-107 Evergreen Street. Mr. Pool stated that his client's property borders the West side of the Beck Group property. He indicated that Beck Group new this was to be zoned "T-N" when they purchased the property and that the Town and neighbors are not responsible for their bad judgment and financial woes. He also set forth how the applicant dragged their feet on completing various requirements placed upon them when they were approved for the current zoning classification. They made a bad business decision and have repeatedly come before the Town trying to reverse that zoning delineation. Ranald Travis stated that that the applicants were very quiet and respectful in the operation of their property and that he did not see a big difference between a retail store and restaurant. The only concern was the noise made during garbage pickup by Taylor. Ann Byrne stated that she had no objection to this restaurant. The public portion of the hearing was then closed.

The Board reviewed the list of factors that a Zoning Board of Appeals is to consider when reviewing use variance requests, and went through those points.

1) Is the property unique? The plight of this property owner is unique to its circumstances;  
2) is the applicant able to receive a reasonable return on his investment; There was sufficient proof to support that element, based upon rental income generated vs. expenses.3) the character of the neighborhood; There is no indication that the character of the neighborhood would be effected.  
This is parkway property and there are multiple high volume business within sight of this property

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and 4) whether the hardship necessitating the variance was self-created. The passage of time has indicated that various factors have played a role in the applicant's hardship. It is not really a self-created hardship.

A motion was made by George Gerner to grant a use variance to the Beck Group, LLC to allow for applicant to lease the stated portion of the property to "Tom & Chee" at 2508 Vestal Parkway East, as presented to the Board, with the condition that the garbage pickup time be addressed so as to minimize any noise in the overnight hours. Tom Smallcomb seconded that motion. A vote was called and

Therefore in consideration of the factors in reviewing a use variance: 1) Is the property unique; 2) is the applicant able to receive a reasonable return on his investment; 3) the character of the neighborhood and 4) whether the hardship necessitating the variance was self-created, 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, and it appearing that the proposed parking variance would not have a negative impact on the character and/or nature of the neighborhood, the Beck Group, LLC is **GRANTED** a use variance to allow for applicant to lease the stated portion of the property to "Tom & Chee" at 2508 Vestal Parkway East, as presented to the Board, with the condition that the garbage pickup time be addressed so as to minimize any noise in the overnight hours. The motion for a use variance was granted by a vote of 4-1. The votes were cast as follows: Chairman, Mark Johnson-AYE, George Gerner-AYE, Thomas Smallcomb-AYE, Eugene Burns- AYE and Mark Tomko-NAY.


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

In the event that the use variance is not utilized within four months from the date hereof, then the variances and/or special permit shall be deemed revoked.

Dated: Nov, 30, 2016

ZONING BOARD OF APPEALS  
OF THE TOWN OF VESTAL

BY:   
Mark Johnson, Chairman