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May 23, 2016

VIA EMAIL – susan.barden@saratoga-springs.org
Zoning Board of Appeals
City of Saratoga Springs
City Hall – 474 Broadway
Saratoga Springs, New York 12866

Re: ANW Holdings, LLC, 27 Jumel Place; Area Variance Application

Dear Zoning Board of Appeals:

We represent Samuel Brewton, Gerald and Debra Mattison, and Sandra Cohen in connection with the above-referenced matter. Mr. Brewton, Mr. and Mrs. Mattison, and Ms. Cohen each either own or reside at property at [redacted] Lake Avenue (Tax Map Parcel No. 166.13-1-4) and [redacted] Lake Avenue (166.13-1-6), located in close proximity to 27 Jumel Place, the site of the proposed Downton Walk project. This letter is submitted in connection with the application by ANW Holdings, LLC for several area variances for the Downton Walk project, proposed for 27 Jumel Place. Submission of this comment letter should not be construed as any waiver of the interpretation appeal filed by Mr. Brewton, Mr. and Mrs. Mattison, and Mrs. Cohen.

As set forth below, the several variances sought should be denied in the absence of a project modification or an effort by ANW Holdings to lessen the requested variances.

In making its determination on the area variance application, the ZBA must consider, among other things, "whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance", and, if inclined to grant an area variance, the ZBA "shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community" (N.Y. General City Law § 81-b [4] [a] [ii], [c]).

Finding that the proposed design is either the "best" or "an" economically feasible use of the property is not sufficient. The burden rests upon the applicant to establish that other feasible alternatives do not exist (see Katz v. Town of Bedford Zoning Bd. of Appeals, 202 AD2d 504, 504 [2d Dep't 1994]). To meet its burden, the applicant must demonstrate that it has sought other alternatives to no avail (see Durler v. Accettella, 165 AD2d 872, 873 [1990]). Even where the applicant has established that the variance sought is insubstantial and will not adversely affect the character of the neighborhood, an applicant's failure to demonstrate that no reasonable alternatives

exist will support a denial of the area variance (see Stengel v. Town of Woodstock Zoning Bd. of Appeals, 155 AD2d 854, 856 [3d Dep't 1989]).

As the ZBA has previously found for this particular parcel, the subject lot can accommodate either five single-family lots or four two-family lots. Proof that the property may be used ***more*** profitably by developing it as a seven-unit condominium than as five single-family lots or four two-family lots does not adequately demonstrate significant economic injury to warrant the grant of an area variance (Stengel, supra, 155 AD2d at 856; see also Ifrah v. Utschig, 98 NY2d 304, 309 [2002]; Orchard Michael, Inc. v. Falcon, 110 AD2d 1048, 1048 [4th Dep't 1985]). "Proof that the ordinance caused the applicant mere inconvenience, or that the property could be utilized more profitably if an area variance were granted, is ordinarily not sufficient to justify the issuance of a variance, irrespective of the application's seeming reasonableness (Human Dev. Servs. of Port Chester, Inc. v. Zoning Bd. of Appeals of Vill. of Port Chester, 110 AD2d 135, 140 [2d Dep't 1985]; Fuhst v. Foley, 45 NY2d 441, 447 [1978]).

Here, the Applicant has indicated that it will incur approximately $754,700 in site development costs expenses, including land purchase costs, professional fees, interest, taxes, soil testing, construction, fill dirt, demolition and asbestos removal, lot clearing, silt fencing, electric lines, and trees. The Applicant represented at the February 22, 2016 ZBA meeting that the proposed condominium units will be offered for sale at prices between $700,000 and $1.5 million.

The Applicant has failed to demonstrate that the variances requested are the minimum variances necessary or adequate to achieve its objectives, or that there is not a feasible alternative available to to achieve its legitimate objectives. As noted above, that the Applicant's proposal may be its preferred proposal or may be the one expected to generate the most profit does not mean that it is the ***only*** feasible alternative. For instance, the record demonstrates that a four-lot subdivision (each lot with a two-family dwelling) or a five-lot subdivision (each lot with a single-family dwelling) could be achievable on the subject site. At the proposed home prices quoted by the Applicant, such a conforming project could be profitable for the Applicant. Thus, there is a feasible alternative, and the variances requested are not the minimum required to achieve the Applicant's objective.

On behalf of Mr. Brewton, Mr. and Mrs. Mattison, and Ms. Cohen, we respectfully request that the ZBA require the Applicant to develop the site in accordance with the Zoning Ordinance, including by making application for an appropriate subdivision, and in the absence of the Applicant's agreement to seek a more appropriately sized project, that the ZBA deny the area variances requested.

Very truly yours,

TUCZINSKI, CAVALIER & GILCHRIST, P.C.

By: _____
Jonathon B. Tingley