A Regular Meeting of the Zoning Board of Appeals was held on Thursday, September 27, 2012 at the Mendon Town Hall, 16 West Main Street, Honeoye Falls, NY, 14472 at 7:00 p.m.

PRESENT: Kevin Wright, Chair

 Don Thorp

 Liz Sciortino

 Bruce Peckham

 Don Irvine

ATTORNEY: Doug Jones Attorney

OTHERS: 5 others.

Minutes were taken by Debbie Tvrdik.

Mr. Wright called the meeting to order at 7:00 p.m.

Mr. Wright stated that the Agenda for September 27, 2012 was incomplete in that it did not include the Nolan Area Variance Determination and we also need to add on the Agenda the review and approve for both the August 9th and August 23rd minutes before the Determinations. Mr. Wright stated that he would prefer to have the informal discussion, the minutes and then the Nolan and Burdett Determinations.

**MOTION**

Mr. Peckham moved, seconded by Mr. Wright to amend the agenda of September 27, 2012 to include the Nolan Area Variance Determination and also add on the Agenda the approval for both the August 9th and August 23rd minutes before the Burdett and Nolan Determinations.

#### ADOPTED

#### Mr. Irvine - aye; Mr. Thorp – aye; Ms. Sciortino - aye; Mr. Peckham – aye; Mr. Wright – aye.

Mr. Jones stated that he is not comfortable having informal discussions, and further stated that we are not an advisory board and never have been and that is why he recommends that residents in this situation retain counsel. Mr. Jones stated that the board could proceed if they wish.

Mr. Wright stated that he would wish to discuss the history of 7228 Rush-Lima Road (formerly Dave’s Mower).

**Karlsen Construction**

Paul Karlsen of Karlsen Construction, 63 Greenbrier Lane, Rochester, NY approached the board for an informal discussion regarding 7288 Rush-Lima Road (formerly Dave’s Mower) which is currently under a use variance in a residential zone.

A discussion followed regarding special use permits and the preexisting nonconforming application for the 7288 Rush-Lima Road property.

Mr. Wright stated that at the board would suggest that Mr. Karlsen submit an application and go through the proper procedures.

Mr. Jones stated that it should be an application for an amendment to the currently existing use variance and consult with an attorney.

Mr. Karlsen left the meeting at 7:13 pm.

**MINUTES**

**MOTION**

Mr. Wright moved, seconded by Mr. Peckham, to approve the minutes of the August 9, 2012 with amendments.

#### ADOPTED

#### Mr. Irvine – aye; Mr. Thorp – aye; Ms. Sciortino - aye; Mr. Peckham – aye; Mr. Wright – aye.

**MOTION**

Mr. Wright moved, seconded by Ms. Sciortino, to approve the minutes of the August 23, 2012 with amendments.

#### ADOPTED

#### Mr. Irvine, - abstain; Mr. Thorp – aye; Ms. Sciortino - aye; Mr. Peckham – aye; Mr. Wright – aye.

## **NOLAN AREA VARIANCE DETERMINATION**

Mr. Wright moved, seconded by Ms. Sciortino, that the area variance requested by David Nolan, 4320 Clover St., Honeoye Falls, NY, a 1 acre parcel in a RA-1 zone, bearing Tax Account No. 215.01-1-46, to construct a 10‘X 14’ garden shed 50 feet from NYS Route 65 instead of the 80 feet required by code, be approved based on the following findings of fact and conclusions of law, with conditions:

FINDINGS OF FACT

1. David Nolan appeared before the Zoning Board of Appeals at the public hearing on August 23, 2012.
2. The Nolan lot, although 1 acre in area and having approximately 300 feet depth on NYS Route 65, slopes upward and is heavily treed behind the house.
3. The area to the south of the driveway and to the east of NYS Route 65 has the required setback, but contains the septic leach field.
4. The area to the north of the driveway has mature Norway pines, which Mr. Nolan is attempting to preserve, at the point 80 feet back from NYS Route 65.
5. The lot is 165 feet wide, and the proposed site for the garden shed is the only level, clear site to locate it.
6. David Tooley, 4312 Clover St., Honeoye Falls, NY, owner of the adjoining property to the north of the Nolan property, appeared at the public hearing and indicated he had no problem with the proposed location for the shed.

CONCLUSIONS OF LAW

1. The benefit David Nolan is attempting to achieve cannot be achieved by any other means.
2. The granting of this variance will not create an undesirable change in neighborhood character or to nearby properties.
3. The request is substantial.
4. The request will not have adverse physical or environmental effects.
5. The difficulty is self-created.
6. This is Type II action under SEQR.

CONDITIONS

The Nolan application includes a photograph of the proposed garden shed. The appearance of the shed in the photograph is consistent with the neighborhood. The Code Enforcement Officer of the Town of Mendon shall ensure that the appearance of the shed erected is consistent with the proposed shed submitted as part of the application. In addition, no outside lighting will be permitted on the shed.

**MOTION**

Mr. Wright moved, seconded by Ms. Sciortino, to approve the determination with conditions.

#### ADOPTED

#### Mr. Irvine – abstain; Mr. Thorp – aye; Ms. Sciortino - aye; Mr. Peckham – aye; Mr. Wright – aye.

Mr. Nolan left the meeting at 7:40.

**BURDETT AREA VARIANCE DETERMINATION**

**MOTION**

Mr. Peckham moved, seconded by Ms. Sciortino, to have Mr. Irvine read his determination in favor of the approval of the Burdett application, with conditions to be added.

#### ADOPTED

Mr. Irvine – abstain**;** Mr. Thorp – aye; Ms. Sciortino - aye; Mr. Peckham – aye; Mr. Wright – aye.

**BURDETT DETERMINATION**

Mr. Irvine moved, seconded by Ms. Sciortino, that the application for an area variance requested by Jessa Burdett, 11 Fountainbleu Drive, Mendon, New York, bearing tax account No. 216.04-1-46, which is located in an RS-30,000 zone, to allow a structure to house up to five chickens at 55 feet from the property line, whereas Town code requires 100 foot setback, be approved, based on the following Findings of Fact, Conclusions of Law and Conditions:

**FINDINGS OF FACT**

1. Jessa Burdett appeared before the ZBA on August 9, 2012.
2. Mrs. Burdett stated that she did not look at the code before purchasing the chickens because it’s very common to see chickens in Mendon.
3. Mrs. Burdett purchased the hens for her daughter and the building of the coop was a family project.
4. Mrs. Burdett stated that the compost is located 18 inches from her deck and that there is no odor.
5. Mrs. Burdett stated that it is her intent to keep the hens enclosed at all times.
6. The existing structure located on Mrs. Burdett’s property is approximately 104 feet from the south property line, 55 feet from the west property line and 70 feet from the north property line and houses 6 chickens, is consistent with the character of the neighborhood.
7. The Burdett family uses the eggs produced by the chickens and the manure is composted and used in the family’s garden.
8. Several neighbors raised concerns about issues such as disease, noise, odor and property values and were not in support of granting the variance.
9. The neighbors who had issues with the coop were not able to substantiate their concerns and seemed to indicate that they just did not want chickens in their neighborhood.
10. Concerns raised by the neighbors, **Noise** – however no one presented evidence that the noise was a nuisance. **Odor** – however no one presented evidence that the odor was a nuisance. **Disease** – however no one presented evidence that the chickens were a threat to spread disease. **Property Value** – however no one presented evidence that chickens have a negative impact on property values.
11. Two neighbors supported the granting of the variance.
12. Mrs. Burdett provided a list of FAQs that contradict the concerns raised by the neighbors.
13. Mrs. Burdett stated that she is open to compromise and conditions.

**CONCLUSIONS OF LAW**

1. The objective of the applicant cannot be achieved by other means.

2. Granting of the variance will not result in an undesirable change in the neighborhood.

3. The request is substantial.

4. Granting of the variance will not produce adverse physical or environmental effects.

5. The difficulty is self-created.

6. This is a Type II action under SEQR.

**CONDITIONS**

1. No roosters allowed.
2. No free ranging of chickens.
3. No other animals other than chickens can be housed in the structure.

Mr. Peckham stated that he disagrees with the statement in the Conclusions of Law that there is not an undesirable change in the neighborhood. Mr. Peckham further stated that in the Findings of Fact there certainly were concerns raised by the neighbors regarding noise, disease, property values. Mr. Peckham stated that by raising urban chickens in this particular neighborhood and given close proximity he feels that the chickens would be disruptive. Mr. Peckham further stated that the neighbors should define what the character of the neighborhood should be, given the fact that it is a relatively small area, small lots and a small community. Mr. Peckham stated that given there were 12 neighbors in attendance at the public hearing and 8 were opposed, this makes it an undesirable change in the community and that fact should be taken into account. Mr. Peckham further stated that this could have been achieved by other means as Mrs. Burdett should have reviewed the zoning regulations prior to erecting the coop and the procedures should have been sought in some other medium. Mr. Peckham further stated that there were other means to achieve the family goals. Mr. Peckham stated that with regard to the self created difficulty - in reviewing various sources on how to build and house chickens in the urban environment, they all stated to see your local regulations. Mr. Peckham stated that in our minutes Mrs. Burdett stated that she was unaware of any local regulations and feels that this mitigates against approval of this application, especially as it relates to the comments we had from the largest crowd we’ve had since the cell tower in Mendon. Mr. Peckham further stated that on all of these grounds he is opposed to the approval of this application.

Mr. Irvine stated that when someone states that something will create an undesirable effect in their neighborhood it must be substantiated with fact. Mr. Irvine stated that he spoke to a few residents in Honeoye Falls and that one neighbor had chickens in their yard, but the other neighbor had no idea they were there, until the neighbor told him he had chicken living in his backyard. Mr. Irvine stated that some of the complaints regarding the Burdett application were noise and odor, these are nonissues to him. Mr. Irvine stated that he agreed with Mr. Peckham that the applicant should have check the local zoning regulations.

Mr. Wright stated that the board is not prejudicial to the fact that the applicant did not check the zoning regulations. Mr. Wright stated that he is relatively supportive as to everything that Mr. Peckham has stated regarding this application and especially with regard to the undesirable change in the neighborhood. Mr. Wright stated that we brought this up the unique character of this particular neighborhood, specifically because there are five adjoining properties to this applicant’s property, more than a usual lot line issue. Mr. Wright stated that the town has created these ordinances to govern this issue and felt that when we vote against the ordinance and grant an application like this we are stating that the town made a mistake in creating the ordinance in the first place.

Mr. Peckham stated that Pittsford and Honeoye Falls have the same code for setback requirements.

Ms. Sciortino stated that when chickens are confined in a coop the issue of spreading disease in ridiculous and that the property value issue is subjective.

Mr. Irvine stated that in this particular neighborhood he found at least 5 or 6 parcels that could meet the requirements to have chickens. Mr. Irvine further stated that as a town, collectively we allow chickens.

Mr. Peckham stated that he concedes the points of odor, noise, etc, and yes the town allows chickens, but felt that the people that took the time to come here and address this board regarding the code to protect the property owners, defined their neighborhood unequivocally that this would be an undesirable change and this would not a be a reason to move there. Mr. Peckham further stated that they defined their neighborhood very clearly and that is what I based his opinion on.

Mr. Thorp stated that when people come before the board he tries to evaluate how valid their comments are and the galleries comments were not valid. Mr. Thorp further stated that he says that from experience because he has raised chickens.

Mr. Wright asked if there were any further comments. There were no further comments.

**MOTION**

Mr. Irvine moved, seconded by Ms. Sciortino, to approve the amended Burdett Determination with conditions.

#### ADOPTED

Mr. Irvine – aye**;** Mr. Thorp – aye; Ms. Sciortino - aye; Mr. Peckham – opposed; Mr. Wright – opposed.

Mrs. Burdett left the meeting at 8:10

**MOTION**

Mr. Wright moved, seconded by Ms. Sciortino, to adjourn the meeting.

#### ADOPTED

#### Mr. Irvine – aye; Mr. Thorp – aye; Ms. Sciortino - aye; Mr. Peckham – aye; Mr. Wright – aye.