A Regular Meeting of the Zoning Board of Appeals was held on Thursday, January 10, 2013, 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: 9 and Ed Walsh, Planning Board Chair

Minutes were taken by Debbie Tvrdik.

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

**THOMASSEN AREA VARIANCE PUBLIC HEARING**

John and Sherry Thomassen, 831 West Bloomfield Road, Honeoye Falls, NY, approached the Board for an area variance at said property, consisting of 4.3 acres, bearing Tax Account No. 205.03-1-12, located in an RA-5 zone, to construct a 32’ x 48’ storage barn which will result in his exceeding his 1% lot coverage by approximately 1,044 square feet.

Mr. Wright stated that the affidavit for the posting of the sign is in the file and asked if the board had a chance to see the property. They all stated they had seen the property.

Mr. Thomassen stated that he and his wife moved to Mendon in 1990 and have been slowly working on the house and would like to construct a 32 x 48 storage barn which would accompany an existing barn stabling two ponies and 1 horse. Mr. Thomassen stated that he is also doing a major addition to the house and the storage barn will aid in the process of storage while the addition is being complete and also for tractors and equipment. Mr. Thomassen stated that because the area variance we are seeking is more than the 1% allowed by the town, we must apply for a variance. Mr. Thomassen stated that when you add the 153 sf. ice house, 363 sf. existing garage, the 865 sf. existing barn and in addition to all of this we are seeking a variance for 870 sf. beyond that, however he further stated that he will be demolishing the existing garage. Mr. Thomassen stated that he is seeking a 508 sf. variance. Mr. Thomassen stated that he looked at other alternatives and he stated he does not want to demolish the ice house as it is an historic structure along with the house which was built sometime before 1899. Mr. Thomassen stated that the barn he is proposing is not a very ornate barn, it is more of a utilitarian barn and the proposed garage will store vehicles and fits with the architecture of the other barn. Mr. Thomassen stated that he is requesting 870 sf. of variance to build the barn and will demolish the existing garage, then making the variance 508 sf.

A discussion followed regarding pictures of the barn and placement on the property and keeping within the architecture of the existing property.

Mr. Wright asked Mr. Thomassen the timeframe. Mrs. Thomassen stated the barn construction is proposed shortly after approval, the addition on the house is proposed for the spring and the garage is proposed in a year or so.

Mr. Wright stated that we do not swear applicants in per se, however we hope that the plans applied for will be forthcoming. Mrs. Thomassen stated that they will happen.

A discussion followed regarding the existing garage being demolished, the proposed garage having an in-law suite and additional space in the proposed garage for parking.

Mrs. Thomassen stated that the house has been restored to its original historical character.

Mr. Wright asked if the storage barn will have lighting. Mr. Thomassen stated that yes it will have lighting and the lighting will be used very minimally. Mr. Wright asked if water and heat are proposed for the storage barn. Mr. Thomassen stated that there will not be water or heat in the storage barn, but there may be a workshop with an electric heater used occasionally. Mr. Wright asked if it will have a dirt or concrete floor. Mr. Thomassen stated that it will have gravel and the concrete floor over the gravel.

A discussion followed regarding placement of the buildings and driveways on the property.

Ms. Sciortino asked the color of the barn. Mr. Thomassen stated that it will be red to match the existing barn or gold to match the house. Ms. Sciortino asked if the barn will be metal. Mr. Thomassen stated that yes.

A discussion followed regarding boats and RVs on the property and the purpose of the storage barn is to keep these items contained.

A discussion followed totaling up the square footage of the buildings and keeping the historical ice house.

Mr. Wright asked the Mr. Thomassen the following questions:

1. Whether the benefit you want to achieve can it be achieved by any other means feasible to you. Mr. Thomassen stated no.
2. In your view, will this create an undesirable change in the character of the neighborhood or any other nearby property? Mr. Thomassen stated no it will enhance the neighborhood.
3. Would you consider this request substantial? Mr. Thomassen stated no.
4. In your view of this request, do you feel this will have adverse or environmental effects? Mr. Thomassen stated no.
5. Is this alleged difficulty self-created? Mr. Thomassen stated yes.

Mr. Wright asked if the proposed area for the storage barn currently being used as pasture. Mr. Thomassen stated no. Mr. Wright asked how the proposed building will drain on the property. Mr. Thomassen stated that it will have gravel and should drain as runoff down the hill.

Mr. Wright asked if there were any further questions from the Board or the public. There were no further questions.

**MOTION**

Mr. Wright moved, seconded by Ms. Sciortino, to close the Public Hearing.

#### ADOPTED

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

A discussion followed regarding the procedure of the application process.

The Thomassens left the meeting at 7:20.

**ACES ENERGY USE VARIANCE PUBLIC HEARING**

Andrew Heiligman of ACES Energy, 1318 State Road, Webster, NY, approached the Board for a Use Variance at 7288 Rush Lima Road, Honeoye Falls, NY bearing Tax Account Number 228.01-1-10, which consists of approximately 1.48 acres, zoned RS-30,000, to allow him to use the property for a contracting showroom/storage/office for his renewable energy business, which requires a use variance from the Zoning Board of Appeals.

Mr. Wright stated that the affidavit for the posting of the sign is in the file and asked if the Board had a chance to see the property. They all stated they had seen the property.

Mr. Heiligman stated that he is the President of ACES Energy, a renewable energy company doing geo-thermal heating and cooling systems in the area as well as solar electric and hot water and a few turbines, but mostly maintenance all over the state. Mr. Heiligman stated that he started the company five years ago outside the Buffalo area, the business took off and he currently has a number of employees and vehicles. Mr. Heiligman stated that he lives in Webster and has three different storage properties for equipment, raw materials and spare parts that he would like to combine into this one property in Mendon, as 85% of his work is within this 20 mile radius. Mr. Heiligman stated that this property has been of interest to him and the property has been on the market for quite some time and has recently become a short sale. Mr. Heiligman stated they would also like to use the property for a showroom and an educational center for the BOCES and boy and girl scouts. Mr. Heiligman further stated that he plans to install a geo-thermal heating and cooling system, a solar system and will not be putting a wind turbine up at this property. Mr. Heiligman stated the property will not be used for a retail location, but may be to sell a filter or two. Mr. Heiligman stated it will be a showroom with limited hours. Mr. Heiligman stated that the house will be refurbished and used for a rental property. Mr. Heiligman stated that there will be no vehicles parked over night at the property and the trucks will go home with the employees. Mr. Heiligman stated that the exterior lighting will be solar LED and very minimal and will have an infrared security system. Mr. Heiligman stated that the sheds will be removed for safety. Mr. Heiligman stated that the property will be used lightly as a showroom but more for storage to increase our efficiency and build up our business.

Mr. Jones stated that he thought the mower shop was discontinued over one year ago. Mr. Dave Dean, 7288 Rush Lima Road, the current owner of Dave’s Mower, was present and stated that Dave’s Mower was still in existence until July 2012. Mr. Jones asked Mr. Heiligman if there was a contingency on the purchase of the property. Mr. Heiligman stated that the one contingency left is to acquire approval from the Zoning Board for his application.

Mr. Heiligman stated that he has received approval from the bank and the seller with the contingency that he acquires approval from the Planning and Zoning Boards.

Mr. Wright stated that if the Use Variance has been dormant and is moot, then the issue is to demonstrate that a mower business with a retail operation would not succeed. Mr. Jones stated that Mr. Heiligman would need to show that there is no reasonable economic return as a mower shop or its other use in an RS-30 zone, by competent financial proof, and that his proposed business use would be a viable alternative for the property. Mr. Jones stated that competent financial proof can be shown by real estate professionals or business professionals and all the four questions have to be answered positively. Mr. Jones stated that the Board would need proof on the record from a competent professional to conclude that the mower shop is not viable to proceed with considering this application.

Mr. Rich Testa with Hunt Real Estate came before the Board and stated that he represents both the buyer and the seller of the property in question and further stated that he has had this property listed for over two years. Mr. Testa, after receiving approval from the seller who was present at the meeting, further stated that one of his assignments was to contact all of the mower shop owners in the region and see of they would consider purchasing the property as it was the natural extension. Mr. Testa stated that he did contact all owners throughout the two year period but found they did not want to invest in this location not even for a lease and with that I can professionally say that this leads me to believe that a mower shop business will not sustain itself. Mr. Testa stated that he could submit a letter. Mr. Jones stated that a letter was not necessary as his testimony is now on record.

A discussion followed regarding a clean and growing business being added to the Mendon community.

A discussion followed regarding the property being used as residential and the property presently being used as residential and commercial.

A discussion followed regarding the use of the house and location not being suited for residential property.

Ms. Sciortino asked the proposed use of the residence. Mr. Testa stated it could be used as a rental property or office space.

Mr. Peckham asked Mr. Testa if a client approaches you to sell their multiple use property, do you find multiple uses for that property. Mr. Testa stated yes. Mr. Peckham asked Mr. Testa if he looked at any other businesses to fit this particular property. Mr. Testa stated yes and that his background is in Strategic Marketing and Supply Chain Management and further stated that he looked at many businesses for this property. Mr. Peckham asked for an example. Mr. Testa stated that he prospected an antique mall. Mr. Peckham asked why that was not viable. Mr. Testa stated because it comes down to financing in this economy. Mr. Peckham stated that they would not earn an adequate return on that property as an antique mall and he further asked Mr. Testa for another example. Mr. Testa stated that another example is a motorcycle repair shop. Mr. Peckham asked why a motorcycle repair shop would not financially sustain on that property. Mr. Testa stated that the requirements are much stricter at the financing institutions due to the economy. Mr. Peckham stated that a motorcycle shop could not achieve a reasonable rate of return because of the constrictions imposed by the financing requirements imposed as to the dual nature of the property. Mr. Peckham asked Mr. Testa for another example. Mr. Testa stated that he spoke to a restaurant owner and there are two factors, one being that the property has a well and the second factor is that the property has a septic system.

Mr. Jones stated that there are only two permitted uses in an RS-30 zone, a single family dwelling.

A discussion followed regarding banking restrictions and square footage requirements for commercial use and financing for residential use.

Mr. Peckham stated that we have heard already that there are three businesses that have found they cannot achieve a reasonable rate of return and we have also found from his expert testimony that this will not fly as a residential use.

Mr. Testa stated that in his opinion Mr. Heiligman’s business is a perfect match for this property and a bright light to the community and a wonderful addition as it is a growing business that can contribute positively to the tax base.

Ms. Sciortino asked how many people Mr. Heiligman employs. Mr. Heiligman stated that he has 6 employees throughout the winter along with an office assistant and himself and it fluctuates with interns, subcontractors and part time help. Ms. Sciortino asked Mr. Heiligman the maximum employees he would have in the summer. Mr. Heiligman stated that he had 8 or 9 full time employees and approximately 15 subcontractors last summer.

Mr. Wright stated that the purpose of the specific questioning regarding modifying the Use Variance from a mower shop to what Mr. Heiligman wants to use the property for, there is a value issue that the Zoning Board has to determine that there is no valid viable use for this property as it currently stands and obviously it is not in anyone’s best interest to have it idle. Mr. Wright further stated that Mr. Peckham did an outstanding job at pursuing this issue. Mr. Wright stated to Mr. Testa that he helped the Board understand all the numerous attempts to sell the property and the numerous alternative uses which are not viable uses and now we have a viable business interested in purchasing the property and the board really appreciates your testimony.

Mr. Testa stated that Mr. David Dean, the present owner of Dave’s Mower is in support of the sale.

Mr. Jones stated that the responsibility of proving the hardship of the property not being viable as a mower shop is usually the seller’s, however, the applicant can stand in the stead of the owner and take the hardship on himself due to the contingent offer.

Mr. Wright asked Mr. Heiligman, can you realize a reasonable return on the property as is. Mr. Heiligman stated that he calculated it would be a negative cash flow of approximately $30,000.00 per year if he let the property sit idle and continue business as it runs today.

Mr. Wright asked that in Mr. Heiligman's view will this create an undesirable change in the character of the neighborhood or any other nearby property. Mr. Heiligman stated no it will enhance the area.

Mr. Wright asked if this alleged difficulty is self-created. Mr. Jones stated that because the mower business was discontinued, that this is not self-created.

Mr. Wright asked if there were any comments from the public.

Mr. Kevin Mannix, 7200 Rush Lima Road, stated that he is a neighbor in the stone house and he is in support of the sale of the property to Mr. Heiligman and its proposed use and if there will be equipment stored outside to maybe screen the property with pine trees, but this will be a great addition to the area.

Mr. Ed Walsh, Chairman of the Mendon Planning Board and the code requires that the Planning Board give their opinion on this application and we have submitted our summary which you should have in your file. Mr. Walsh further stated that when you considered all of the uses that were proposed, none of them would have been allowed in that zone and my question is should you be seeking allowed uses in that zone as opposed to these other uses that you have indicated. Mr. Jones stated that if you complied with the single or double family residential you would still have hardship in that area.

Mr. Irvine asked when the lease ended on Dave’s Mower business. Mr. Jones stated that if some of the equipment was still present on the property then technically the lease stands. Mr. Dean stated that they moved the last equipment out in July of 2012. Mr. Testa stated that the sign came down in September or October.

Mr. Wright asked when Mr. Dean ceased to be the operator of Dave’s Mower. Mr. Dean stated hat he sold the business to George in 2003. Mr. Wright asked if Mr. Dean currently lived in the home. Mr. Dean stated yes.

David Meisenzahl, 2900 Rush Lima Road stated that this is not a deserted area and there are neighbors in the area, not right next to each other. Mr. Wright stated that it is relatively undeveloped and has not been changed dramatically. Mr. Meisenzahl asked if after Mr. Heiligman refurbishes the home, he plans on residing in the home. Mr. Wright stated that it will be rented or until the time as it may be required for office space. Mr. Heiligman stated that it will be a rental property or an employee rental property. Mr. Meisenzahl stated that he is concerned that the property is surrounded by farmland and chemicals are sprayed on the fields in that area.

A discussion followed regarding safety of the farmlands and residents living near farmed fields and the Freedom to Farm Act and the property being a duplex or a single residential property.

Mr. Peckham stated that the deliberation of the Planning Board last night’s report stated that (Mr. Peckham read the first paragraph which is in favor of the application) The Planning Board’s perspective of the proposed use while not a permitted use in this district will result in no negative impact on the area and in all probability will result in a significant improvement of the site and its current use and state.

**MOTION**

Ms. Sciortino moved, seconded by Mr. Wright to close the public hearing.

#### ADOPTED

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

**MINUTES**

**MOTION**

Mr. Wright moved, seconded by Mr. Peckham, to approve the minutes of the December 13, 2013 meeting with amendments.

#### ADOPTED

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

**DISCUSSION**

A discussion followed regarding the determination for the ACES application.

**MOTION**

Mr. Irvine moved, seconded by Mr. Wright, to adjourn the meeting.

#### ADOPTED

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

The meeting adjourned at 8:25 pm.