A Regular Meeting of the Zoning Board of Appeals was held on Thursday, September 14, 2017, at the Mendon Town Hall, 16 West Main Street, Honeoye Falls, NY, 14472 at 7:00 p.m.

PRESENT: Bruce Peckham

 Daniel Bassette

 Liz Sciortino

David Cook

ATTORNEY: Jeff Clark

ABSENT: Clayton Lacey

OTHERS: Councilperson John Hagreen and 1 other

Minutes were taken by Michelle Booth.

Mr. Peckham opened the meeting at 6:58 p.m.

**FLOESER USE VARIANCE PUBLIC HEARING (Continued)**

Michael Floeser, 38 Shara Place, Pittsford, NY requesting a use variance at 3802 and 3804 Rush Mendon Road, NY, consisting of 2.69 acres, bearing Tax Account No. 216.1-1-11, located in a Business zone, to allow a two-family dwelling on the property which requires a use variance.

Mr. Peckham reviewed all paperwork.

Mr. Peckham asked if this will cause an undesirable change in the neighborhood. Mr. Floeser stated no.

Mr. Peckham asked if the difficulty was self-created. Mr. Floeser stated no.

Mr. Peckham asked if he could realize a reasonable rate of return on investment with a single family home. Mr. Floeser stated no.

Mr. Peckham asked if the hardship applies to a substantial portion of the neighborhood. Mr. Floeser stated no.

**MOTION**

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

**APPROVED**

Mr. Peckham – aye; Mr. Bassette – aye; and Ms. Sciortino – aye; and Mr. Cook – aye.

**MINUTES**

**MOTION**

Ms. Sciortino moved, seconded by Mr. Cook, to accept the minutes of the August 24, 2017 meeting as submitted.

**APPROVED**

Mr. Peckham – aye; Mr. Bassette – aye; and Ms. Sciortino – aye; and Mr. Cook – aye.

**FLOESER USE VARIANCE DETERMINATION**

Mr. Bassette moved, seconded by Mr. Peckham, that the use variance requested by Michael Floeser, 38 Shara Place, Pittsford, NY requesting a use variance at 3802 and 3804 Rush Mendon Road, NY, consisting of 2.69 acres, bearing Tax Account No. 216.1-1-11, located in a Business zone, to allow a two family dwelling on the property which requires a use variance, be approved based on the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. Mr. Floeser, the property owner appeared before the Zoning Board of Appeals at the public hearings on 7/13, 7/27, 8/24, and 9/14.

2. Mr. Floeser wishes to be allowed to continue to use the property at 3804 Rush Mendon Road as a 2 family dwelling.  This request would make no changes to the property, but use the variance process to resolve a long standing violation that has recently come to the Boards’ attention.

3. Section 200-18.B.(6) of the Mendon Zoning Code allows Single-Family Dwellings in the Business District, and prohibits all uses not listed in 200-18.B.  Two-Family Dwellings are not listed under 200-18.B, nor are they specifically listed under 200-18.D. as a permitted special use.  Apartments are listed as a special use under 200-18.D.(1)

4. Mr. Floeser states the building was a 2-family structure when he purchased it in 2009, 8 years ago.    Mr. Floeser states he believes the property was in compliance with all necessary code when he purchased it.  He has been unable to get a statement from the previous owner, Mr Russel, as to Mr Russel’s actions taken to be in compliance with the code.

5. Mr. Floeser provided the Board with a rental analysis created by Maureen Toombs from Magellan Real Estate.  This analysis, combined with tax records also submitted, show that converting and renting the house as a single family dwelling is not economically viable.

6. Joyce Miller spoke at the public hearing to confirm she has been a tenant of the structure since 2004, 13 years ago.  She states that it was a 2 family dwelling well before Mr. Floeser purchased the property.

**CONCLUSIONS OF LAW**

1. The request will not have an undesirable change in the neighborhood, as it has existed in its current form for over a decade.

2. The difficulty was not self-created, as it was created by the previous owner, and Mr. Floeser purchased the property as it is in good faith, believing any necessary variances had already been acquired.

3. The property owner cannot realize a reasonable return on investment, as the expected income of a one family rental would not cover expenses.  In addition, the cost of converting the property is significant.

4. The alleged hardship does not apply to a substantial portion of the neighborhood, due to the history of it having been a two family dwelling for so long.

5. This is a Type II action under SEQR

**CONDITIONS**

1. The variance granted continues with the property regardless of ownership.

**MOTION**

Mr. Cook moved, second by Ms. Sciortino to adjourn the meeting.

**APPROVED**

Mr. Peckham – aye; Mr. Bassette – aye; and Ms. Sciortino – aye; and Mr. Cook – aye.