A Regular Meeting of the Zoning Board of Appeals was held on Thursday, April 12, 2018, 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

Clayton Lacey

David Cook

ATTORNEY: Jeff Clark

OTHERS: Councilperson John Hagreen and 1 other

Minutes were taken by Michelle Booth.

Mr. Peckham opened the meeting at 7:00 p.m.

**DOUG OSOVSKI USE VARIANCE PUBLIC HEARING**

Doug Osovski, 11 Split Rail Run, Penfield, NY, requesting a use variance for property at 4287 Clover Street, Honeoye Falls, consisting of 73 acres, known as Mendon Acres, bearing Tax Account No. 215.03-1-2.12, located in an RA-1 zone, to offer ice cream, occasional barbecue and cider and doughnuts for sale at his farm market.

Mr. Peckham opened the Public Hearing at 7:01pm.

Mr. Osovski explained why he is seeking a use variance. He is trying to supplement his income by enhancing what he grows. He will not be adding any new structures, he will use the existing structures. He is having water run to the building and the bathrooms will be finished very soon.

Mr. Lacey asked if he had been in contact with the NYS Department of Health. Mr. Osovski stated that he has contacted them. They sent him to the NYS Agriculture and Markets. NYS Agriculture and Markets will set the standards for the operation.

Mr. Bassette asked what percent of income would come from the sale of the ice cream, BBQ, or such. Mr. Osovski stated that 20% would probably be a high estimate.

Mr. Bassette asked how many Barbeques he will hold each year. Mr. Osovski says once a month maybe twice if it goes well.

Ms. Sciortino asked if Mr. Osovski will be moving to the property. Mr. Osovski says they would like to after the kids graduate.

Mr. Lacey asked where people would park. Mr. Osovski stated that there is a large parking area and he could add more if needed.

Mr. Cook asked if last year was the first year. Mr. Osovski confirmed.

Mr. Cook asked if he ended in the red or black, in terms of income. Mr. Osovski stated he broke even he thinks. The accountant is still working on this.

Mr. Peckham asked if there is a deprivation of a reasonable economic return from the property in questions as demonstrated by competent financial evidence. Mr. Osovski stated yes.

Mr. Peckham asked if the hardship is unique in that it is not shared by a substantial portion of the district or neighborhood. Mr. Osovski stated yes.

Mr. Peckham asked if the request was self-created. Mr. Osovski stated no.

Mr. Peckham asked if the use variance would alter the essential character of the neighborhood. Mr. Osovski stated no.

Mr. Peckham reviewed the spreadsheet provided by Mr. Osovski relative to his financials.

Mr. Cook stated that there is a fairly short time frame to get things going this season and there is an obvious hardship after looking at the financials from 2017. He asked if they can do a temporary variance to allow Mr. Osovski to start. Mr. Peckham stated they could not do that.

Mr. Bassette stated that Mr. Osovski can start the project if he wants. If we do not approve it in the long run, he would have to quit. It is his risk to take.

Mr. Peckham asked Mr. Clark how they should proceed.

Mr. Clark stated that they could amend the existing Special Use Permit to satisfy this request as stated in section 200-13d.

Mr. Peckham asked if they can amend a Special Use Permit that the Planning Board originally approved. Mr. Clark stated he would check for sure.

Mr. Clark stated that Farm Markets are not defined in the code.

Mr. Bassette asked if Mr. Osovski has seen this type of farm market anyplace else. Mr. Osovski stated yes, there is Green Acres in Greece, Chases Market, and Stokes Farm.

Mr. Peckham says that they need to specifically define a farm market.

Mr. Bassette asked if the ice cream would be an accessory, not the primary product being sold. Mr. Osovski agreed.

Mr. Peckham said the code states that if it is clearly a non-specified accessory so the Planning Board can approve it to offset the risk.

Mr. Bassette asked if it must go to the Planning Board for final approval. Mr. Peckham says they can approve it conditionally, but it will ultimately have to be approved by the Planning Board.

Mr. Peckham asked if there were any questions or comments from the public. There were none.

 **MOTION**

Mr. Lacey moved, seconded by Mr. Bassette, to close the Public Hearing.

**APPROVED**

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

**OSOVSKI USE VARIANCE DETERMINATION**

Ms. Sciortino moved, seconded by Mr. Lacey that the request by Doug Osovski, 11 Split Rail Run, Penfield, NY, requesting a use variance for property at 4287 Clover Street, Honeoye Falls, consisting of 73 acres, known as Mendon Acres, bearing Tax Account No. 215.03-1-2.12, located in an RA-1 zone, to offer ice cream, occasional barbecue and cider and doughnuts for sale at his farm market be approved based on the following findings of fact and conclusions of law with conditions:

**FINDINGS OF FACT**

1. Mr. Osovski appeared before the Zoning Board of Appeals at a public hearing on April 12, 2018.

1. Mr. Osovski explained the purpose of the proposed retail store is to provide a source of revenue to mitigate the common risks experienced in the principal agricultural business at the site.

1. This is a new business which began improvements to the property in 2016 and opened in 2017.  Mr. Osovski explained the lengthy process of bringing new crops to production status.

1. The retail location will be in a barn located in the area in the area nearby the existing structures on the property.

1. Various government agency approvals will be needed for the site and the retail business. The need for these approvals is acknowledged by Mr. Osovski and has been initiated.

1. Mr. Osovski reviewed the financials provided with the application and discussed the financial outlook for the business with the Board.

1. No members of the public commented at the hearing.

**CONCLUSIONS OF LAW**

1. The applicant is substantially unable to guarantee a reasonable return on this start up agri-business due to the various risks common to this type of business. The retail operation is needed to mitigate these risks by attracting customers during each crop season and to provide additional revenue.

1. The hardship is unique as it is not shared by a majority of parcels in the same area.

1. The hardship has not been self-created. The difficulties are caused by risks inherent in the agri-business, and not generated by the applicant.

1. The requested variance will not alter the essential character of the neighborhood.

**CONDITIONS**

The location of retail sale of accessory goods is limited to the barn shown on the map provided with the application.

Approval by the Town of Mendon Planning Board of the application pursuant to Town Code Section

 200-13C (5) “Other Non-Specific Accessory Uses”, or other sections of the Town Code that the Planning Board may deem applicable.

Licenses or certifications required by appropriate governmental or regulatory authorities related to the retail sales activity must be provided to the Town of Mendon Code Enforcement Officer by October 12, 2018. Failure to do so will void the use variance granted by this determination. The Town Code Enforcement Officer may grant an extension to January 12, 2019 to receive documents required by this condition.

Products offered for sale in the retail operation shall be consistent with both Accessory Uses as defined or reasonably intended in the Town Code Section 200-13C (5) and those enumerated in the application.

**APPROVED**

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

**MINUTES**

**MOTION**

Ms. Sciortino moved, seconded by Mr. Lacey, to accept the minutes of the March 8, 2018 meeting as submitted.

**APPROVED**

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

**MOTION**

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

**APPROVED**

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