A Regular Meeting of the Zoning Board of Appeals was held on Thursday, May 10, 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

David Cook

ABSENT: Clayton Lacey

ATTORNEY: Jeff Clark

OTHERS: Supervisor John Moffit, Town Attorney Sheldon Boyce, Doug Jones

Minutes were taken by Michelle Booth.

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

**DOUG OSOVSKI USE VARIANCE DETERMINATION DISCUSSION**

Attorney Boyce requested to address the Board. He strongly advises a rehearing on this matter because an Article 78 could happen and he does not believe the current decision would hold up in court.

Mr. Cook asked who is filing an Article 78. Attorney Boyce introduced Mr. Jones.

Mr. Jones stated he neighbors the property. He stated that Town Law states no use variances will be approved without showing unnecessary hardship. The alleged hardship should be unique to the area. An agricultural business naturally has fluctuations. He says the use variance is self-created because the land is the same as it was when he bought it. Nothing changed.

Mr. Jones says that he used to be the Zoning Board Attorney. The ZBA is not here to decide if someone has a good business plan or not.

Ms. Sciortino asked Mr. Jones if he has seen the business plan? Does he not think it will work? Mr. Jones stated that is not what he is saying.

Ms. Sciortino asked Mr. Jones if he has any different ideas of what he can be serving? Mr. Jones states that he doesn’t even know what he’s serving, he just knows the decision is illegal.

Mr. Cook asked if Mr. Jones is concerned with procedural issues not the actual actions. Mr. Jones stated that they would need the town to change the definition of a restaurant.

Mr. Jones stated that use variance should be very rare.

Ms. Sciortino asked Mr. Jones where he lives. Mr. Jones answered that he lives across the street on the South side.

Mr. Osovski was asked if he would like to say anything. He stated that nothing has changed on his end. He is not looking for a restaurant, he just wants to supplement his income a little.

Mr. Bassette asked Mr. Boyce if there is a way to make the decision acceptable. Mr. Boyce said the decision now will not hold up in Court. A restaurant in an RA1 zone is not defensible.

Mr. Osovski asked if this is because of the retail sales. Mr. Jones said no, it’s because it is a restaurant in a RA1 zone.

Mr. Peckham asked if there were any questions relating to the discussion tonight.

Ms. Sciortino asked if the key word causing issues is restaurant. She said everyone has their own definition of restaurant and Mr. Osovski is not going to have waiters and waitresses.

Mr. Cook stated that he feels like there is an elephant in the room and something they don’t know about.

There was a short discussion about an executive session.

Mr. Peckham believes that the decision from April 12, 2018 needs to be relooked at and based on the information received and the nature of what was introduced, they have not followed the law. He stated that the town attorney has been placed in a difficult situation and the board should look at it again and have a rehearing on the matter.

Ms. Sciortino stated that the word restaurant is not in the finding of facts.

Mr. Boyce stated that the motion approved ice cream, berries and barbeques.

Mr. Cook asked what part of the decision cannot be defended.

Mr. Jones stated that the ZBA should follow the law and he is very disappointed.

Mr. Cook asked Mr. Jones if this was his regular practice to review the determinations from the board. Mr. Jones stated he looked at this one because it is next to his property.

Mr. Peckham said they should do a rehearing and check the four conditions of a use variance. He stated that the part of this that bothers him is that they created a definition that they didn’t intend.

Mr. Cook asked Mr. Jones if he believes that reopening the hearing could allow this to go through. Mr. Jones stated this is up to them, just respect the law.

Mr. Clark recommended that the board rehear the matter to come to a decision that the town attorney can defend.

Ms. Sciortino asked which law they didn’t follow. Mr. Jones said to read 267b.

Mr. Jones says chapter 74, definition of restaurants, could be adjusted by the Town Board.

Mr. Cook asked Mr. Moffitt if this is something the board has spoken about. Mr. Moffitt stated. No.

Mr. Peckham says that they tried to fit the law to the case instead of following the law.

**MOTION**

Mr. Bassette moved, seconded by Mr. Peckham, to rehear the matter.

**APPROVED**

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

**MINUTES**

**MOTION**

Mr. Peckham moved, second by Ms. Sciortino, to table the minutes for the meeting.

**APPROVED**

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

**DISCUSSION**

Mr. Peckham said that the rehearing will still allow them input on the matter.

Mr. Clark stated that they make decisions too quickly sometimes, they can take time. They can look for previous decisions that can be defended.

Mr. Cook told Mr. Clark to tell Mr. Osovski to get an attorney for this.

**MOTION**

Mr. Cook moved, second by Mr. Peckham, to adjourn.

**APPROVED**

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