A Regular Meeting of the Zoning Board of Appeals was held on Thursday, July 28, 2022 at the Mendon Community Center, 167 North Main Street, Honeoye Falls, NY, 14472 at 7:00 pm.

PRESENT: Daniel Bassette

 Stephen Maxon

 Dustin Cichon

 Christian Mahood

ABSENT: Stephen Tudhope

ATTORNEY: David Hou

OTHERS: Town Supervisor, John Moffitt; Town Councilperson, Tom Dubois; Approximately 40 residents of the Town and two individuals via ZOOM.

Minutes were taken by Katrina Allen.

Mr. Bassette opened the meeting at 7:00 pm.

Mr. Bassette advised the Board does not normally do interpretation; however, the last time there was an appeal of the Code Enforcement Officer’s (CEO) interpretation, there was just as large of a crowd.

Mr. Paul Sylvestri, attorney for Margaret Fiore, said they are there to deal with the CEO’s interpretation dealing with tourist homes/bed and breakfasts. He said the CEO stated it is not Ms. Fiore’s primary residence, but it is. Mr. Sylvestri said this has generated a lot of interest, but this is not about the Special Use Permit and venue if the applicant goes to the Planning Board. He said Code defines no criteria or definition of ownership. Mr. Sylverstri said New York State (NYS) law says when it is not specific, it is in favor of the property owner.

Mr. Maxon said Mr. Syvestri’s decision to manipulate does not automatically change the definition.

Mr. Sylverstri said Ms. Fiore bought the home in October 2020 with her husband for their primary residence and Tourist Home. He said Ms. Fiore spends thirty percent (30%) at this home. The application says it is her primary residence, and she supplied her driver’s license. She has voter registration and voted in the last Supervisor election. He said Ms. Fiore has family here, and when she comes to visit them, she stays at 383 Pond Road. She wants to farm and have apple orchards. She is restoring the farm and has a property caretaker and a property manager.

Mr. Sylvestri continued and said Code defines Bed and Breakfast, but Tourist Home is undefined. When the term is defined the method of interpretation is to avoid redundancy, so it must mean something else.

Mr. Maxon asked how is it Ms. Fiore’s primary residence if she is there one-third of the year? Mr. Sylvestri said she spends the most amount of time there than her other properties. She meets criteria for residency, and her job is restore the farm. Her address is 383 Pond Road on her driver’s license. She has family in the area, and her voter registration and the mailing address her utilities go to is 383 Pond Road.

Mr. Maxon said the IRS Tax Code, which is what Mr. Sylvestri is saying is similar, states where you live most of the time is the most important factor. Mr. Sylvestri said yes.

Mr. Cichon said we allow Tourist Homes; we do not allow temporary housing.

Mr. Maxon asked if they want the Zoning Board to reverse the CEO’s interpretation and are asking us to interpret the Code of primary residence. Mr. Sylvestri said there is no need to interpret what is primary residence.

Mr. Bassette asked if the property is still being rented. Mr. Sylvestri said it is blocked out. Only family and friends have been staying, and they donated one rental to charity. There was no money exchanged between them and no money being transferred.

Mr. Cichon said he follows Instagram and it is listed. Ms. Fiore said it is blocked. Mr. Cichon said it is still being advertised though. Ms. Fiore said it is still blocked. Mr. Cichon said the intent was to be reserved.

Mr. Cichon asked if Ms. Fiore is hosting events. Ms. Fiore said no. She is only hosting her personal events. She has a lot of family in the area, and they come to the house to use the pool.

Mr. Cichon asked about the wedding that was at 383 Pond Road. He was advised it was permitted, and it was a one-time Special Use Permit.

Mr. Cichon asked about the Monroe County Water, and Ms. Fiore said the wedding event was required to bring their own water. They have potable water, and their water is safe to drink.

The septic was discussed.

Mr. Bassette asked for clarification on the thirty percent of time Ms. Fiore is staying there. Mr. Sylvestri said when looking at the properties the Fiores used, the most time is split between Pond Road and their Florida residence.

Mr. Hou asked the applicant to describe to the Board the length and number of stays. Is she flying every weekend? Ms. Fiore said she feels like she is being persecuted. She and her husband have done very well and own several properties. She said May, June, July, and part of August and September, she was mostly in Florida and up here. She has ben taking care of her mom, who is bed-ridden, and she feels like she is being punished. She pays her bills online and uses Canadian National Bank.

Mr. Hou asked if Ms. Fiore meant Canandaigua National Bank. Ms. Fiore asked what she had said, and Mr. Hou said Canadian National Bank. Ms. Fiore corrected it.

Ms. Fiore said she bought the property in September of 2020, and spent October, November, and part of December here. Her husband became half paralyzed, and she had to fly to Long Island, where he was, until they were able to fly him home to Florida. She does not keep a calendar of where she is when. She is free to go anywhere in the world and does not need to keep a record of where she is and when. She drives and flies.

Ms. Fiore said she is up here one week out of the month. She was asked if it is one week straight, and Ms. Fiore said yes. She said she averages one full week a month; sometimes more. She went to Florida at some point in January to see her husband.

Mr. Hou asked Ms. Fiore if she could tell the Board how much time she does spend here when she comes. She said she spends a minimum of one week a month, and sometimes more. She said she is here, on average, one week a month.

Mr. Bassette asked Ms. Fiore if she is in Florida when she is not here. Ms. Fiore said sometimes she is in Florida, or she might be in Canada as Canada is now open.

Mr. Sylvestri said when Ms. Fiore is not here, she has a caretaker and a property manager that can be there if she is not present if it were to be rented. So, if she was not to be there if it was rented, then she has a caretaker and property manager. Mr. Maxon said that does not matter, as the Town Board amended the Code specifically to remove the term “Operator” and it must be Owner Occupied.

Mr. Sylvestri said he would ask them why they are being so restrictive on Owner Occupied. Mr. Cichon said that is how New York State Department of Taxation defined it. If you are owner occupied, it is a B&B, it is taxed. If you are Tourist Home, then you are not taxed. Ms. Fiore said they are taxed. Mr. Cichon said that it is prorated.

Mr. Bassette advised that the Town changed the Code because that is what they chose to do. Mr. Sylvestri said he believes the Town requires owner occupied, because then the owner is overseeing the tenants, and there is a higher level of accountability. Mr. Sylvestri said she has not one, but two people that can be here if she may not be here all the time.

Mr. Sylvestri said there is someone there that can deal with noise or garbage being thrown. Mr. Cichon said or if someone is driving an ATV down the middle of the road with the music blaring at three o’clock in the morning.

Mr. Maxon said when the owner is on the premises, there is a higher level of accountability because they are overseeing the tenancy.

Mr. Hou asked if the caretaker and property manager live on the premises. Ms. Fiore said they do not. She said the caretaker is the Fire Chief of the Honeoye Falls Fire Department. He is there almost every day working on the farm.

Mr. Bassette asked the Board if there were any questions. There were none.

**PUBLIC COMMENT**

Ron Zauski, 20 Stony Ridge Drive, said he must drive on Pond Road everyday when he leaves his home. He walks past 383 Pond Road, walks his dog by it, and rides his bike almost daily. He is assuming the woman up there is Margaret Fiore, and he has never seen her a day in his life.

Mel and Denny Pooler, 373 Pond Road, said they just bought the property next door. She wants to know if they live there. There are reviews posted every month, and there are 10-15 people each time. The reviews also say they are booked out every week. They are in construction business and purchased the property to build in a rural area, not Henrietta. They are opposed to events and weddings. She believed Air B&B and VRBO was for 2-6 people on the weekend, but this seems to be big, and there are company picnics and family reunions there. The previous people that owned the property the Poolers bought, sold it immediately, and now she knows why.

Jim Buchholz, 972 Pittsford Mendon Center Road, said he has lived here for 45 years and there was a minimum amount of acreage needed to build a house. Now, it is five acres minimum to build a house. If it is zoned commercial, what the Fiores are doing is okay. If it is zoned residential, it is against the law.

Mel Pooler, said they have been there doing site work and have not seen any owner at 383 Pond Road.

Web Pilcher, 495 Pond Road, stated he has lived here for 18 years with his wife, Allyson and are building their retirement home at 461 Pond Road. They moved to Pond Road to get away from the commercial landscape and wanted to be somewhere more rural. He was walking past there recently, and there were about 10 cars there and 12 or so young men in the front yard, drinking beer with their shirts off and had beautiful tattoos. Dr. Pilcher said he has nothing against tattoos, or beers, or young men, but it was clearly a commercial event. One of his colleagues he works with rented that facility with all his family a couple months ago. He did not meet the Fiores the entire time they were there. He said he is not a lawyer, but is seems that something is zoned residentially or commercially, and we seem to be blurring the lines here. Dr. Pilcher said, furthermore, the speed limit on Pond Road is 55 mph, and many people walk, jog, and ride their bikes on Pond Road. People that live here know we drive a little more slowly on Pond Road. People that do not live here and are on a weekend getaway are going to drive 55 mph on Pond Road, and someone is going to get hurt.

Mel Pooler said they recently rented an Air B&B in Ohio, and the owners met them there to give them the key.

Dave and Cynthia Remley, 437 Pond Road, said they have lived at this property for 11 years and within Mendon and Pittsford area for 50 years. She said she remembers when there was horse and carriage traffic and now, we have the speed of vehicles. This may be connected to the Bed and Breakfast, but they sleep with their windows open so they can hear the horses get out. They have heard celebrations taking place there at one and two o’clock in the morning. She said we are an R-5A zoning district and as last stated by the Board, any business needs to be in the confines of the business district, and this is not. Ms. Remley said they have walked past 383 Pond Road on occasion, and have not met the owners, nor have they come down to meet us.

Gary Loope, 21 Semmel Road. He said Ms. Fiore can give a breakdown of what time she spent at each of her properties. She can check with the airlines or if she has a private plane, flight plans must be filed, and she can check those. Mr. Loope thought you had to be there more than half the time to be resident. He said if you own it, you should be there when it is rented. The owner resident must be there; not just now because of the farm. It seems owner occupied means you need to be there when it is rented. I would think the owner would want to be there to protect their property. Mr. Loope said the attorney asked why the Town changed it to owner occupied, and although he cannot speak for the Town, he believes that is to keep the rural character of the Town.

Mel Pooler said they have had to pick their son up from two Honeoye Falls graduation parties on Pond Road and it is stark and black as night at two am, and suddenly, the Pond Road house is lit up, and it is dark again until they get to the graduation party. This has happened two times, and both times, you could see the activity there.

Mr. Bassette asked if these parties are at 383 Pond Road or a different address. Ms. Pooler said they were different addresses, but it is completely dark and then 383 is lit up.

Mr. Buchholz asked the Board if they are responsible for the zoning laws. Mr. Maxon said no, that is the Town Board.

Mr. Maxon said today, they are hearing the appeal of the CEO’s interpretation of the code.

The Board explained the purpose of the meeting.

Mr. Pooler said they have owned their lot for a month, and they have already met Dave and Cindy. He went down and introduced himself, because he is planning on building a house there and being a resident.

Deborah Lloyd, 151 Pond Road, said her concern is it not being the primary residence. Primary residence is where you spend the most time; not equal amounts of time.

Doug Lloyd. 151 Pond Road, asked if the application was denied, and the activity there continued, does that not set a precedence on how things will be going forward? They were denied, and to him that means they stop and go through the process. They did not stop, and we are still going through the process.

Mr. Cichon replied the CEO will apply fines, and the application has been on hold for approximately six to eight months. It will need to go through the legal process within the Township.

Mr. Lloyd said whether the fines were made or not, it is still denied and they are still. Mr. Chicon said they are still running an illegal operation.

Mr. Cichon said the Town should have pursued an injunction against them, but that is not for us.

Dennis Gaebel, 1190 Pittsford Mendon Center Road, asked about the fines and if we have a number that has been accumulated. Mr. Cichon said that has not been disclosed. Mr. Gaebel said for someone that owns five properties, he does not think those fines will matter to them.

Sheryl Thomassen, 831 West Bloomfield Road, said she has lived there 31 years, and it is zoned residential, and it is zoned agricultural. They have horses and do not want a business in their neighborhood. An Air B&B and four bedrooms is a business. They live here, because they do not want to live in the city. They do not want to listen to music and partying; however, if their neighbors have a party, she welcomes it. When she has parties, she welcomes her neighbors, because she is part of this community. She said in this community, we respect each other. They do not want people coming and going.

Mr. Zauski asked if there was a sign out at the house for the Zoning Board. He was advised there is.

Ms. Gaebel said she has lived here since she was 16 years old, and she has seen an increase in traffic. Her property runs behind 383 Pond Road, and she has seen an increase in fireworks. There in an increase in noise and traffic, and she likes the quietness of the country.

Dr. Pilcher said he understands there have been two cease and desist orders issued by the Town, and they have been ignored. He thinks that is a pattern of their behavior, and that is unsettling.

Mr. Bassette asked if there were anymore questions or if anyone was online. There were none.

Mr. Hou asked about the Air B&B profile and it lists Monica as the host. Mr. Sylvestri said she is the Business Manager. Mr. Maxon asked if she was the Property Manager, and Mr. Sylvestri said she is the Property Manager.

Mr. Sylvestri said to be clear, if the profile looks booked, it is because they blocked it out, so it will not be booked. There were a couple of weekends in April and May, or less, when it was rented out, but it has not been in the recent past. So, some of the comments about parties have them scratching their heads. Perhaps it was a family party as stated before.

Ms. Fiore said she has cameras coming into and out and all throughout the property. Her phone will go off, her caretaker’s phone will go off, and her business manager’s phone will go off.

Mr. Sylvestri said the reason they are here is to get an application in front of the Planning Board so there can be a legally run Bed and Breakfast slash Tourist Home business.

Kelly Mari, 6 Surrey Hill Lane, said she has been inspired by the other comments. There are those that want to settle down and venture out in the community and how they treat it and their intentions. There has been someone who purchased a home and is making friends and meeting neighbors. Actions speak louder than words and maybe it is a primary, secondary, third, maybe, home, or maybe she does not have a primary residence, but their actions towards other neighbors shows their intent is not to be a resident here.

Wayne Prentice, 28 Parkview Manor Circle asked about the process. The Board explained the process of the appeal.

Brad Van Auken, 145 Pond Road, stated there needs to be an exact definition in New York State and Monroe County of what residency is. He has so many friends that are Snowbirds, that all live in New York and Florida and spend six months and one day in Florida, so they do not pay NYS property tax. He has a friend who must keep exact records of all his travel, so he does not lose residency.

Mr. Bassette stated within the code, there are definitions for a bunch of things, and if it ever comes into question what something means, then it comes to us for interpretation or the Town Board for the Code.

Mr. Hou asked Mr. Sylvestri if they wanted to submit additional information to the Board. Mr. Sylvestri said yes.

The Board discussed the next steps and the applicant will reappear at the August 11, 2022 Zoning Board of Appeals meeting.

**MOTION**

Mr. Maxon moved, seconded by Mr. Mahood to close the Public Hearing at 8:10 pm.

**APPROVED**

Mr. Bassette – aye; Mr. Maxon – aye; Mr. Mahood – aye; and Mr. Cichon – aye.

Mr. Maxon stated he wanted it on the record what authority the Code Enforcement Officer has to deny an application to the Planning Board and from the Town Board, what was their intent on the amendment of the specific part of the Code.

**MINUTES**

**MOTION**

Mr. Maxon moved, seconded Mr. Cichon to approve the minutes, as amended, from July 14, 2022 meeting.

**APPROVED**

Mr. Bassette – aye; Mr. Maxon – aye; Mr. Mahood – aye; and Mr. Cichon – aye.

**MOTION**

Mr. Maxon moved, seconded by Mr. Mahood to adjourn the meeting at 8:21pm.

**APPROVED**

Mr. Bassette – aye; Mr. Maxon – aye; Mr. Mahood – aye; and Mr. Cichon – aye.