A Regular Meeting of the Zoning Board of Appeals was held on Thursday, May 25, 2023 at the Mendon Town Hall, 16 West Main Street, Honeoye Falls, NY, 14472 at 7:00 pm.

PRESENT: Daniel Bassette

 Stephen Maxon

 Dustin Cichon

 Christian Mahood

Stephen Tudhope

ATTORNEY: David Hou

OTHERS: Town Councilperson, Tom Dubois; Richard Franco, Partner at Davidson and Fink Attorneys at Law.

Minutes were taken by Katrina Allen.

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

**MINUTES**

Mr. Mahood moved, seconded by Mr. Maxon to approve the minutes from May11, 2023 Zoning Board of Appeals meeting.

**APPROVED**

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

**McKEAN AREA VARIANCE PUBLIC HEARING**

An area variance application by Bradley McKean, 7009 Rush Lima Road, Honeoye Falls, consisting of 11 acres to remove an existing porch and construct 313.8 square foot addition with a front setback of 34 feet, whereas code requires an 80-foot setback from a state road and therefore requires an area variance. Zoned RA-2. Tax account no. 221.03-2-1

Mr. Bassette waived reading the public notice as it was published in the Sentinel.

Mr. Bassette asked if the members of the Board were familiar with the property. They all were.

Mr. McKean explained he and his wife want to tear off the old front porch on the street side and build a bedroom addition in its place. Their family is growing, and they need the space.

Mr. McKean said the back of the property is for their future deck, the driveway is to the north, the propane and septic are on the south, so this is the only space that is available for the addition.

Mr. Bassette said this is outside of their purview, but he was looking at the floorplan, and internally, the applicants can do what they want, but someone may not want to walk through the office to get to the bedroom. They can do what they want, but Mr. Bassette said he wanted to offer that feedback.

Ms. McKean said they love their house and their neighbors. They want to be able to stay there and send their kids to HF-L schools, but they need the space.

Mr. Bassette asked if the current setback is 40 feet and the reason he wants to tear it off is it is in poor condition. Mr. McKean said yes, it is in poor condition, has single-pane windows, and a flat roof with three or four layers. The ceiling has mold on it. He would use the existing foundation for the addition.

Mr. Cichon asked what is in the backyard, and is it their leach field. Mr. McKean said they always had plans for a wraparound porch. It was always their intent to have it off where the sliding glass doors are.

Mr. Mahood asked when the property was built. The applicant stated 1937, but in the basement, they found a foundation over the foundation, and figured it must have burned down and was rebuilt it in 1937.

Mr. Bassette waived the asking of the five questions as they had been answered.

Mr. Bassette said he does not believe he formally opened the Public Hearing.

Mr. Bassette opened the Public Hearing at 7:06 pm.

**PUBLIC COMMENT**

None

**MOTION**

Mr. Maxon moved, seconded by Mr. Mahood, to close the public hearing at 7:06 pm

**APPROVED**

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

**FLOWERS BY STEVE, LLC APPEAL OF CEO’S INTERPRETATION SECOND APPEARANCE**

An application by Flowers by Steve, LLC, for property located at 977 Mile Square, Pittsford, NY, consisting of 2.61 acres, bearing Tax Account No. 206.03-1-1.2 Zoned RA-5, requesting a review of the Code Enforcement Officer’s interpretation of Section 260-13 (B) of the Zoning Ordinance which states any use not specifically permitted is prohibited. Applicants are operating a short-term rental on the property.

Mr. Bassette said at the last meeting, the Public Hearing was closed; therefore, there is no need to bring the applicants up to the table. The attorney worked with the previous draft of the determination and added some comments. Mr. Bassette said he had some comments and so did Mr. Maxon.

Mr. Hou stated in terms of process, since the public hearing is closed, they can deliberate as a Board.

Mr. Tudhope asked where the Town is on its process. Mr. Bassette said a draft of the new code has had a public hearing, but they have not voted on it. The moratorium is still in effect. He does not know if there will be a new draft and a new public hearing or if the vote will be on the existing draft, but is a moot point for them.

Mr. Bassette asked if everyone had a chance to read the draft he sent out. Mr. Maxon said he did not receive it and asked Mr. Bassette what changes he made. Mr. Bassette said there was a typo in a name, the date had to be changed to tonight, and some paragraphs were swapped out.

Mr. Bassette said the Board states a Tourist Home is synonymous with a Short-term Rental and they are not permitted in the Town, therefore, the CEO was correct.

Mr. Bassette read the determination.

**RESOLUTION – DECISION ON INTERPRETATION**

**FLOWERS BY STEVE, 977 MILE SQUARE ROAD**

 **WHEREAS**, an appeal and interpretation request by Flowers by Steve (the “Owner” or "Appellant”), 977 Mile Square Road (the “Property”) was received by the Clerk of the Town Zoning Board of Appeals (“ZBA”) on August 29, 2022, appealing Town Code Enforcement Officer (“CEO”) Corey Gates’ Notice of Potential Zoning Violation letter dated August 1, 2022 (the “Determination), which held that the Owner’s short term rental business operation was in violation of Town Code § 260-13(B), that short term rentals were not a specifically permitted use in an RA-5 Residential Agricultural District; and

**WHEREAS**, the ZBA is authorized to hear appeals from such determinations and the ZBA may reverse or affirm, wholly or partly, or may modify the determination appealed from and make such determination as in its opinion ought to be made and, to that end, shall have all the powers of the officer from whom the appeal is taken, pursuant to Town Law § 267-b (1), and Town Code § 260-91(A)(2), and the ZBA conducted duly noticed public hearings in accordance with the law on May 11, 2023, at which the Appellant and/or its representatives and members of the public were present; and

**WHEREAS**,at said public hearing(s) all who desired to be heard were heard and their testimony and any submissions they wished to make were received into the record of the proceedings; and

**WHEREAS**, this appeal is classified as a Type II action under Section 617.5(c)(37) of the New York State Environmental Quality Review Act and therefore does not require further action; and,

**WHEREAS**, after due deliberation, the ZBA has carefully considered the appeal and all of the testimony and submissions by the Appellant, the CEO, the Town, and all others who wished to be heard;

 **NOW, THEREFORE, BE IT RESOLVED** that the ZBA makes the following findings:

For the reasons that follow, we affirm the CEO’s Determination insofar as that we conclude that the Appellant’s short term rental use is not a permitted use in an RA-5 Residential Agricultural District without a special use permit.

The Property is located in an RA-5 Residential Agricultural District (Town Code § 260-13). Section 260-13(B) identifies permitted principal uses and states that “[a]ny use not specifically permitted is prohibited.” Relevant to this proceeding, Section 260-13 permits “one single-family dwelling per lot”. The Property contains a single-family dwelling and is being used as a short-term rental.

The ZBA notes that a moratorium on short-term rentals in the Town is currently in effect. Specifically, Section 4 of the moratorium states that short-term rentals includes tourist homes. Sections 2 and 6 of the moratorium states that the purpose of the moratorium is to prohibit short-term rental uses in the Town until the Town has had the opportunity to review the Town Code to determine how short-term rentals should be regulated to protect the health, safety, and welfare of Town residents.

Appellant contends that short-term rentals are “unregulated” and cites usage of that term in the moratorium as justification for short-term rentals being lawful. The word “unregulated” is used in Section 2.2 of the moratorium, the full sentence being: “As such, the Town Board finds that unregulated short-term vacation rentals, or short-term rental occupancies as defined in this local law, may be incompatible with residential neighborhoods and zoning districts, and that such uses must be carefully regulated and monitored to minimize deleterious effects in residential zoning districts.”

The ZBA disagrees with Appellant’s contention. When read in context with the rest of the moratorium, it is clear that this language was intended to express the Town Board's stance that short-term rentals requires more regulation and oversight, and was not intended to be, as Appellant contends, an implicit acknowledgement that short-term rentals were “unregulated” and therefore a permitted use.

 On the contrary, short-term rentals, as being synonymous with tourist homes, were in fact regulated at the time Appellant purchased the property in December 2021. The Town Board amended Town Code § 260-52 (B) on December 13, 2021. Prior to that date, the section required that the “operator(s) of the tourist home/bed-and-breakfast shall reside on the premises”[[1]](#footnote-1) (emphasis added). The amendment changed the language to require that the premises “be owner occupied, such that the premises is the owner’s primary residence”.[[2]](#footnote-2) The amendment thus effected two changes – it required an owner (not simply a third-party “operator”) to reside on the premises, and it required that the premises be that owner’s “primary residence.” A ZBA’s interpretation of a provision of Town Code should be based, whenever possible, on the original intent of the governing board.[[3]](#footnote-3) It is apparent, therefore, that the Town has in fact regulated tourist homes for some time.

As previously stated, tourist homes/short-term rentals are indeed regulated by the Town Code. Relevant to this proceeding, Section 260-13(D), “Special permitted uses”, states that a special use permit is required for “Tourist homes and bed-and breakfast establishments.” The specific provisions applicable to tourist homes and bed-and-breakfast establishments are found in Town Code § 260-52. There is no claim that the Property is being used as a bed-and-breakfast establishment.

The Appellant contends that their usage is permitted because the Property is rented only "to single families, or groups functioning as single families," and Section 260-13B(1) lists "single-family dwelling" as a permitted use. A "single-family dwelling" is defined in the Code as "a detached residential dwelling unit . . . designed for and occupied exclusively by one or more persons living as a single housekeeping unit" (Town Code sec 5-4). Renting the Property to a series of individuals, families, or groups cannot constitute use as a single-family dwelling. Instead, this use of the Property qualifies as operating a "tourist home," which requires a special use permit under Section 260-13(D).

Although the Town Code does not specifically define “tourist homes”, a “tourist home” is commonly defined as: “a house in which rooms are available for rent to transients”[[4]](#footnote-4); “a private home or dwelling, other than a rooming house, boarding house, hotel or motel, in which not more than four (4) rooms are offered for rent to the travelling public for sleeping accommodation.”[[5]](#footnote-5) Additionally, as previously stated, the moratorium also defines short-term rentals to include tourist homes. From the evidence in the record and the testimony submitted during this proceeding there is no dispute that the Property is indeed rented as a short-term rental. The ZBA further notes that the Appellant concedes that it did not consult with the CEO about its proposed use or its own interpretation of the Town Code prior to commencing this use of the Property.

For all the foregoing reasons, the ZBA finds and determines that a “tourist home” is synonymous with a short-term rental and that short-term rentals are therefore regulated in the Town Code as requiring a special use permit in order to be a permitted use in an RA-5 Residential Agricultural District; the CEO’s Determination that “[a]ny use not specifically permitted is prohibited” is therefore affirmed because Appellant lacks a special use permit for a tourist home. Although Appellant, as part of its appeal, has indicated its intent to seek a special use permit and/or an area variance, the ZBA notes that, in light of the existing moratorium on short-term rentals, no special use permits or area variances regarding short term rentals can be reviewed or approved until such time as the moratorium has been lifted.

Mr. Mahood moved, seconded by Mr. Maxon.

Daniel Bassette Aye

Stephen Maxon Aye

Dustin Cichon Aye

Christian Mahood Aye

Stephen Tudhope Aye

Approved: 5 (Five) Ayes, 0 (Zero) Nays

**DANIEL BASSETTE**, Chairperson of the Zoning Board of Appeals, hereby certifies that the foregoing Resolution was duly adopted at a meeting of the ZBA duly convened and held on May 25, 2023, a quorum being present.

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 Daniel Bassette, Chairperson

 Zoning Board of Appeals

**MICHELLE BOOTH,** Town Clerk of the Town of Mendon, hereby certifies that the foregoing Resolution was duly filed in her office on May 26, 2023.

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 Michelle Booth, Town Clerk

 Town of Mendon

Mr. Maxon stated the Goodemotes bought the property to operate a Tourist Home, and in the RA-5 zoning district, they would have needed a Special Use Permit, and they never had a Special Use Permit. The Goodemotes argued the property was a single-family use, but a single-family dwelling in Code does not allow a series of different families, so the argument does not work.

**MOTION**

Mr. Mahood moved, seconded by Mr. Maxon to uphold the Code Enforcement Officer’s interpretation in approving the determination.

**APPROVED**

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

The Board reviewed the McKean Area Variance Determination.

**MCKEAN AREA VARIANCE DETERMINATION**

Mr. Tudhope moved, seconded by Mr. Maxon, that the area variance requested by Bradley McKean, 7009 Rush Lima Road, Honeoye Falls, consisting of 11 acres, with Tax account no. 221.03-2-1, Zoned RA-2, to remove an existing porch and construct 313.8 square foot addition with a front setback of 34 feet, whereas code requires an 80-foot setback from a state road and therefore requires an area variance, be **approved** based on the following:

WHEREAS, Bradley McKean, the property owner appeared before the Zoning Board of Appeals at the public hearing on May 25, 2023; and

WHEREAS, Section 260-106 of the Mendon Zoning Code states the RA-2 District has a front setback of 80 feet when on a state road. The applicant is requesting a front setback of approximately 34 feet; and

WHEREAS, The existing three season porch is in disrepair, while the applicant has need for additional four season space as a bedroom and office; and

WHEREAS, The applicant intends to remove the existing front porch and build an addition on the house in this location, resulting in being approximately 6 feet closer to the road then at current; and

WHEREAS, The existing house has a setback of approximately 40 feet; and

WHEREAS, Informal usage of online satellite mapping tools shows a number of nearby houses having front setbacks around 35 feet; and

WHEREAS, The other sides of the residence are unavailable for placing this addition due to the existing land usage, including septic system and drive way; and

WHEREAS, No members of the public commented during the public hearing; and

WHEREAS, This application is exempt from County Planning Board review under General Municipal Law 239-m pursuant to an agreement dated January 24, 1994 between the County and the Town which exempts matters set forth therein from further County review; and

WHEREAS, after review, the Zoning Board of Appeals has weighed the effects of the requested variance on the health, safety, and welfare of the neighborhood and community, and made the following findings:

1. The requested benefit can**not** be achieved by other feasible means, as exist land usage prevents other locations.
2. The request **is** substantial as it reduces the setback to less than half of the requirement.
3. Upon review of Short Environmental Assessment Form (617.20 Appendix B), the board finds the request will **not** have any adverse physical or environmental effects as the impacted is too small.
4. The request will **not** have an undesirable change in the neighborhood as many of the nearby properties are setback a similar distance from the road and this replaces the worse conditioned part of the structure.
5. The difficulty **was** self-created as it is the applicants desired use of the space driving this request.
6. This is a Type II action under SEQR

NOW, THEREFORE, BE IT RESOLVED that the application be **granted** for the reasons stated above.

**MOTION**

Mr. Tudhope moved, seconded by Mr. Maxon to approve the McKean Area Variance in the determination.

**APPROVED**

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

**GENERAL DISCUSSION**

The Board discussed the 6/8/23 and 6/22/23 meetings are canceled as there are no agenda items.

**MOTION**

Mr. Tudhope moved, seconded by Mr. Mahood to adjourn at 7:27 pm.

**APPROVED**

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

1. *See* Town Code former § 260-52(B). [↑](#footnote-ref-1)
2. *See* Town Code § 260-52(B). [↑](#footnote-ref-2)
3. *See* Zoning Board of Appeals, New York Division of Local Government Services, available at https://dos.ny.gov/system/files/documents/2021/09/zoning-board-appeals-.pdf [accessed July 18, 2022]. [↑](#footnote-ref-3)
4. https://www.merriam-webster.com/dictionary/tourist%20home [↑](#footnote-ref-4)
5. https://www.lawinsider.com/dictionary/tourist-home#:~:text=Tourist%20home%20means%20a%20private%20home%20or%20dwelling%2C,rent%20to%20the%20travelling%20public%20for%20sleeping%20accommodation. [↑](#footnote-ref-5)