A Regular Meeting of the Zoning Board of Appeals was held on Thursday, January 24, 2013, at the Mendon Town Hall, 16 West Main Street, Honeoye Falls, NY, 14472 at 7:00 p.m.

PRESENT: Kevin Wright, Chair

Don Thorp

Liz Sciortino

Bruce Peckham

ABSENT: Don Irvine

ATTORNEY: Doug Jones

OTHERS: John Rooney, Town Board and Ed Walsh, Planning Board Chair

Minutes were taken by Debbie Tvrdik.

Mr. Wright called the meeting to order at 7:00 p.m.

**FESS AREA VARIANCE PUBLIC HEARING**

Timothy Fess, 173 Bulls Saw Mill Road, Honeoye Falls, NY, approached the Zoning Board for an area variance at said property, consisting of 1.45 acres, bearing Tax Account No. 215.02-1-43, located in an RA-1 zone, to construct a 32’ x 36’ addition to the existing barn which, when added to the existing accessory structures, will result in his exceeding his 1% lot coverage by approximately 1,596 square feet.

Mr. Wright stated that the affidavit for the posting of the sign is in the file and asked if the board had a chance to see the property. They all stated they had seen the property.

Mr. Fess stated that he has a deteriorated building and he would like to build a storage barn for three or four old cars but mainly rehab the existing buildings. Mr. Wright stated that it is a relatively small lot and this is a substantial building. Mr. Fess stated that he will not be rehabbing the house and further stated that he succeeded in getting Monroe County water to the property. Mr. Wright stated that Mr. Fess has a backhoe on the property. Mr. Fess stated that the backhoe was supposed to be gone a few months ago and his friend will be getting it off the property soon. Mr. Wright stated that there are a number of pallets on the property. Mr. Fess stated that the pallets will line the shelves inside the building. Mr. Wright stated that Mr. Fess submitted a very vague image of the potential building.

A discussion followed regarding placement of the buildings on the property.

Mr. Wright stated that the board requires more specific plans as to the dimensions, exterior, doors, etc., and that the additional structure must fit into the present character of the neighborhood. Mr. Fess agreed and stated that the existing building is approximately 20 feet wide and further stated that he would like to extend the building to 32 feet by 28 feet depending on if the trees will be eliminated. Mr. Fess stated that there will be a 6 foot jog making the building 36 feet, as the existing building is 30 feet. Mr. Wright asked the height of the peak. Mr. Fess stated that the ceiling will be 9 to 10 feet in height but did not calculate the height of the peak. Ms. Sciortino asked Mr. Fess to give clarification on the two different doors. Mr. Fess stated that the larger door is for his boat but he could make the doors the same size if required.

Mr. Wright stated that the existing barn is 52 feet wide and 36 feet deep. Mr. Fess agreed and stated that this is his first time before the board and further stated that he was unsure as to how specific the plans should be. Mr. Wright stated that we may leave the public hearing open so Mr. Fess has a chance to submit more specific plans.

Mr. Fess stated that the exterior will be gray with a red roof but again was unsure.

A discussion followed regarding the aerial view of the property, setbacks, odd shaped lot and property owners adjoining the proposed property.

Mr. Fess stated that he owns two more acres but they have two different tax numbers.

A discussion followed regarding combining the properties and a 70 foot right-of-way on the adjoining property.

Mr. Wright asked if the proposed building will have electricity and water. Mr. Fess stated yes.

Mr. Peckham asked if both buildings will have similar exteriors and will they look like one building. Mr. Fess stated yes. Mr. Wright asked if Mr. Fess plans to attach the freestanding garage to his home. Mr. Fess stated that he may in the future.

Mr. Wright asked if anyone from the public had any comments. Mr. Walsh stated that due to the fact that the public hearing will remain opened, he would like to look over the proposed plans for this application. Mr. Wright stated that he would like more extensive drawings.

Mr. Wright asked the Mr. Fess the following questions:

1. Whether the benefit you want to achieve can it be achieved by any other means feasible to you. Mr. Fess stated no.
2. In your view, will this create an undesirable change in the character of the neighborhood or any other nearby property? Mr. Fess stated no.
3. Would you consider this request substantial? Mr. Fess stated yes.
4. In your view of this request, do you feel this will have adverse or environmental effects? Mr. Fess stated no.
5. Is this alleged difficulty self-created? Mr. Fess stated yes.

Mr. Fess stated that he would prefer the exterior to be T-111. Mr. Wright stated that the exterior is your preference however it needs to be submitted at the next Zoning Board meeting. Mr. Peckham asked what the timeframe is for this project. Mr. Fess stated that he would like to be completed in the next 4 to 5 months.

Mr. Wright asked if there were any further questions from the Board or the public. There were no further questions.

**MOTION**

Mr. Wright moved, seconded by Mr. Peckham, to continue the Public Hearing.

#### ADOPTED

#### Mr. Thorp – aye; Ms. Sciortino - aye; Mr. Peckham – aye; Mr. Wright – aye.

A discussion followed regarding the procedure of the application process.

Mr. Fess left the meeting at 7:27.

**THOMASSEN AREA VARIANCE DETERMINATION**

Ms. Sciortino moved, seconded by Mr. Wright, that the area variance requested by John and Sherry Thomassen, 831 West Bloomfield Road, Honeoye Falls, on 4.3 acres, bearing Tax Account No. 205.03-1-12, located in an RA-5 zone, to construct a storage barn which will result in their exceeding their 1% lot coverage by approximately 1,044 square feet, be approved based on the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. Mr. and Mrs. Thomassen appeared before the Zoning Board of Appeals at the public hearing on January 10, 2013.

2. The storage barn will be 32' x 48' and be located 36' from the rear property line.

3. A 60' x 60' base for the project will be covered with gravel with construction above grade and drainage on all sides.

4. The existing, free standing, one car garage will be demolished in the near future and replaced by an attached three car garage thereby reducing the current overage of 1,044 square feet by 362 square feet.

5. The Thomassens intend to move the recreation and farm equipment, currently stored outside, into the new accessory structure.

6. There are no dwellings or accessory structures in close proximity to this property.

7. No members of the public spoke at the public hearing.

**CONCLUSIONS OF LAW**

1. The benefit the Thomassens are attempting cannot be achieved by other means.

2. The granting of this variance will not create an undesirable change in the neighborhood.

3. The request is substantial.

4. The request will not have adverse physical or environmental effects.

5. The difficulty is self-created.

6. This is Type II action under SEQR.

**MOTION**

Ms. Sciortino moved, seconded by Mr. Wright, approve the Thomassen Determination.

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#### ADOPTED

#### Mr. Thorp – aye; Ms. Sciortino - aye; Mr. Peckham – aye; Mr. Wright – aye.

**ACES ENERGY USE VARIANCE DETERMINATION**

Mr. Wright moved, seconded by Mr. Thorp, that the use variance requested by Andrew Heiligman, 1318 State Rd., Webster, NY, 14580 doing business as ACES-Energy, to conduct a renewable energy business at 7288 Rush-Lima Rd. (NY State Rt. 15A) a 1.48 acre parcel in a RS-30 zone, bearing Tax Account No. 228.01-1-10, be approved based on the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. Mr. Andrew Heiligman appeared before the Zoning Board of Appeals at the public hearing on January 10, 2013.
2. 7288 Rush-Mendon Rd. is the former site of Dave’s Mower, a retail sale and repair site that operated at this location from 1988 until 2012, first as a family business and later under a third party lease. The ZBA granted a use variance to conduct this business on April 14, 1988. The site contains a showroom and warehouse building erected in 1988, as well as a single family dwelling and several small accessory buildings.
3. Mr. Heiligman proposes to purchase the site and headquarter his renewable energy system contracting business in the showroom-warehouse building. He intends to refurbish and rent the dwelling as a homesite to third parties if and until he might require the home to be used as an office site for the business. The showroom would be used as a demonstration site for renewable energy systems (geothermal and solar heating and cooling, and wind turbines), and only by appointment. There is no walk-in business traffic anticipated.
4. Mr. Richard Testa, Hunt Real Estate, a realtor representing both the sellers of the property and the potential buyer Mr. Heiligman, testified extensively about his attempts over an extended interval to maintain or relocate a new mower shop operator to the property without success. In the first instance, the former lease-operator declined to purchase the property when it came up for sale. Instead, that operator chose to shut down his business. Mr. Testa testified that, after the shutdown, he approached a significant number of other mower shop operators with the proposal that they buy and operate a mower shop business at the site, but without success. In effect, changes in the business model for such a retail-based mower business are not favorable for potential operators. In addition, he found that three other proposed business forms for the site (antique mall, motorcycle repair, and a restaurant) were also not viable after extensive analysis.
5. The permitted use of the property currently allowed under the code is as a single family residence. Mr. Testa testified that attempts to market the property for this purpose were also unsuccessful.
6. The current owners of the property (and the original operator of Dave’s Mower) corroborated Mr. Testa’s description of the attempts to sell the site as a mower business. In addition, Mr. Heiligman stated that were he to purchase the property and were the ZBA not to grant the requested use variance, he would incur a $30,000 per year operating deficit on the property.
7. Two neighbors, one a farmer conducting farming operations to the rear and to either side of the site along Rt. 15A, and the other a residential neighbor to the north, appeared at the public hearing and indicated that they had no objection to the property operating under a different use variance. In addition, the Planning Board of the Town of Mendon, in its capacity as the grantor of Special Use Permits, presented to the ZBA an advisory document outlining its support for the granting of a new use variance for this property.

**CONCLUSIONS OF LAW**

1. Mr. Heiligman (ACES-Energy) cannot realize a reasonable return on his investment in this property without relief as demonstrated by competent testimony.
2. The alleged hardship is unique and comes about because, over time, the business model for the sale and repair of mowers has changed unfavorably for small operators, and so a viable business of that type can no longer be operated at 7288 Rush-Mendon Rd.
3. The granting of this variance will not alter the essential character of the neighborhood.
4. The hardship has not been self-created.

**MOTION**

Mr. Wright moved, seconded by Mr. Thorp, to approve the Aces Energy Use Determination.

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#### ADOPTED

#### Mr. Thorp – aye; Ms. Sciortino - aye; Mr. Peckham – aye; Mr. Wright – aye.

**MINUTES**

**MOTION**

Mr. Wright moved, seconded by Ms. Sciortino, to approve the minutes of the January 10, 2013 meeting with amendments.

#### ADOPTED

#### Mr. Thorp – aye; Ms. Sciortino - aye; Mr. Peckham – aye; Mr. Wright – aye.

**DISCUSSION**

A discussion followed regarding the Fess application.

**MOTION**

Mr. Wright moved, seconded by Mr. Thorp, to adjourn the meeting.

#### ADOPTED

#### Mr. Thorp – aye; Ms. Sciortino - aye; Mr. Peckham – aye; Mr. Wright – aye.

The meeting adjourned at 8:20 pm.