A Regular Meeting of the Zoning Board of Appeals was held on Thursday, July 27, 2017, at the Mendon Town Hall, 16 West Main Street, Honeoye Falls, NY, 14472 at 7:00 p.m.

PRESENT: Bruce Peckham

 Daniel Bassette

 Clayton Lacey

 Liz Sciortino

 David Cook (arrived at 7:06)

ATTORNEY: Jeff Clark

Others: Councilperson John Hagreen and 7 others.

Minutes were taken by Mary Fletcher.

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

**MOTION**

Ms. Sciortino moved, seconded by Mr. Lacey to amend the agenda by adding approval of the minutes of the July 13, 2017 meeting.

**APPROVED**

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

**GHIDIU AREA VARIANCE PUBLIC HEARING (Continued)**

Dave Ghidiu, 4143 Clover Street, Honeoye Falls, NY, consisting of 2.5 acres, bearing Tax Account No. 203.04-1-12.11, located in an RA-2 zone, came before the Board for an area variance to construct a 6 foot high fence in the front yard, whereas code states no fence in the front yard shall exceed four feet above ground level.

Mr. Peckham opened the Public Hearing and stated the Affidavit of Posting was in the file along with the public notice. Mr. Peckham stated he was waiving the reading of the public notice.

Mr. Ghidiu explained that he wanted to continue the look of the original fence and explained the layout of the fencing.

All the Board members stated they were familiar with the property.

Mr. Peckham asked if the fencing would impede the view pulling out to the road. Mr. Ghidiu stated no.

Mr. Peckham asked if this could be achieved by other means. Mr. Ghidiu stated the fencing would decrease the noise volume since they are so close to the road and also act as a deer fence.

Mr. Ghidiu stated the proposed fencing will match the existing fencing. Mr. Ghidiu stated there would not be any change to the driveway opening.

The Board reviewed the SEQR and asked Mr. Ghidiu to complete two of the questions.

Mr. Peckham asked if this would result in any undesirable changes to the neighborhood. Mr. Ghidiu stated no.

Mr. Peckham asked if the benefit could be achieved by other means. Mr. Ghidiu stated no.

Mr. Peckham asked if the request was substantial. Mr. Ghidiu stated no.

Mr. Peckham asked if there would be any adverse physical or environmental effects. Mr. Ghidiu stated no.

Mr. Peckham asked if this was self-created. Mr. Ghidiu stated no.

There were no other questions from the Board.

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

**MOTION**

Ms. Sciortino moved, seconded by Mr. Bassette, to close the public hearing.

**APPROVED**

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

**TRIPI AREA VARIANCE PUBLIC HEARING**

Susan Tripi, 26 Buggy Whip Trail, Honeoye Falls, NY, and Richard Blodget, her fiancé, came before the Board requesting an area variance for said property consisting of 1.6 acres, bearing Tax Account No. 230.04-1-7, located in an RA-1 zone, to construct a 35’ by 36’ garage (a 72 square foot shed already exists) which exceeds the 1% lot coverage allowed by Code.

Mr. Peckham opened the Public Hearing. Mr. Peckham stated the affidavit of posting was in the file and waived the reading of the public notice.

Mr. Peckham asked if the garage would be a work space. Mr. Blodget stated he would do wood working there, and there will be electric.

Ms. Tripi stated there is an existing 2 car garage and a small shed off to the side. Ms. Tripi stated the garage will be constructed on an old basketball slab.

Mr. Peckham opened the meeting to comments from the public. There were no comments.

Mr. Peckham asked if there would be an undesirable change to the neighborhood. Ms. Tripi stated no.

Mr. Peckham asked if the benefit could be achieved by other means. Ms. Tripi stated no.

Mr. Peckham asked if the request was substantial. Ms. Tripi stated no.

Mr. Peckham asked if the request would have any adverse physical effects. Ms. Tripi stated no.

Mr. Peckham asked if this was a self-created difficulty. Ms. Trip stated yes.

**MOTION**

Mr. Cook moved, seconded by Mr. Lacey, to close the public hearing.

**APPROVED**

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

**GARTLAND AREA VARIANCE PUBLIC HEARING**

Liz and Ted Gartland, 130 Drumlin View Drive Mendon, NY, came before the Board requesting an area variance at said address, consisting of 0.7 acres, bearing Tax Account No. 216.12-1-26, located in an RS-30,000 zone, to construct a 10 foot x 12 and ½ foot shed with a side setback of 13 feet, whereas code requires a side setback of 15 feet.

Mr. Peckham stated a letter had been submitted to the Town relative to this application. Mr. Peckham read the letter from the Mitchells, next door neighbors of the Gartlands, stating they had issues with the location of the proposed shed.

Mr. Gartland stated they were not aware of this letter. Mr. Gartland stated he had spoken to Mr. Mitchell, and he had no concerns.

Mrs. Gartland explained they wanted to place a shed on the west end of the property while they were renovating the surface around the pool deck. Ms. Gartland explained the shed would be approximately 2 feet closer to the property than allowed by code. A discussion followed regarding the privacy fence and the shed and the trees that existed between the Gartlands and the Mitchells property.

Mrs. Gartland stated the shed would not be a pool house – it would be used to store furniture and bikes.

Mr. Peckham asked if the shed could be placed someplace else. Mrs. Gartland stated they have already shortened the shed and they had spoken to the neighbor.

There were no other questions from the Board.

Mr. Peckham asked if this would result in an undesirable change to the neighborhood. Mr. Gartland stated no.

Mr. Peckham asked if the request could be achieved by any other means. Mrs. Gartland stated no.

Mr. Peckham asked if the request was substantial. Mr. Gartland stated no.

Mr. Peckham asked if there would be any adverse physical or environmental effects. Mr. Gartland stated no.

Mr. Peckham asked if the difficulty was self-created. Mrs. Gartland stated yes.

Mr. Cook asked when they spoke to the neighbor. Mr. Gartland stated it was before they put the fence up and the neighbor said he didn’t care.

A discussion followed regarding planting a tree. Mr. Gartland stated there were already trees along the property line. Mrs. Gartland stated the pad, that had already been put down for the shed, cost them approximately $800.

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

**MOTION**

Ms. Sciortino moved, seconded by Mr. Lacey, to close the public hearing.

**APPROVED**

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

**DAVE STOTT (MENDON 64) AREA VARIANCE PUBLIC HEARING (Continued)**

for David Stott, 75 Langpap Road, Honeoye Falls, NY, came before the Board for an area variance for property located at 1369 Pittsford Mendon Road (Mendon 64), Mendon, NY, consisting of 1.62 acres, bearing Tax Account No. 216.01-1-26, located in a business zone, to build a structure over a patio which would have a 5 foot 6 inch setback, whereas Town Code requires a 10 foot setback.

Mr. Peckham stated the affidavit of posting was in the file and waived the reading of the public notice.

Mr. Stott stated he was before the Board for a front patio that was added in the past couple of months. Mr. Stott stated he did not think it was a structure and that the Code was vague.

Mr. Stott stated he had a license to serve alcohol on the patio. Mr. Stott stated the patio was in service and being used. Mr. Stott stated the patio was existing but had not been utilized, and they used the existing footprint when building.

Mr. Lacey stated the Code Enforcement Officer had stated this area had been a sidewalk. Mr. Stott stated it was access to the patio and was brick pavers.

Mr. Bassette asked if Mr. Stott had added vertical posts to this area. Mr. Stott stated he added vertical and horizontal posts.

There were no other questions from the Board.

Mr. Peckham asked if this would result in an undesirable change to the neighborhood. Mr. Stott stated no.

Mr. Peckham asked if the result could be achieved by other means. Mr. Stott stated no.

Mr. Peckham asked if the request was substantial. Mr. Stott stated no.

Mr. Peckham asked if there would be any adverse physical or environmental effects. Mr. Stott stated no.

Mr. Peckham asked if the request was self-created. Mr. Stott stated financially.

Mr. Peckham opened the meeting to comments from the public. There were no comments.

**MOTION**

Ms. Sciortino moved, seconded by Mr. Lacey, to close the public hearing.

**APPROVED**

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

**FLOESER USE VARIANCE PUBLIC HEARING (Continued)**

Michael Floeser, 38 Shara Place, Pittsford, NY came before the Board requesting a use variance at 3802 and 3804 Rush Mendon Road, NY, consisting of 2.69 acres, bearing Tax Account No. 216.1-1-11, located in a Business zone, to allow a two family dwelling on the property which requires a use variance.

Mr. Peckham stated there were two issues still to be discussed – if this was self-created and whether there was a financial hardship. Mr. Floeser stated he was waiting for information from a realtor for a market analysis.

Mr. Peckham asked if Mr. Floeser had a letter from the prior owner stating when the construction was done that created the two separate living areas. Mr. Floeser stated he has been contacting the prior owner, and Mr. Floeser stated he feels the gentleman is hesitant to get back to him.

A discussion followed.

Mr. Floeser requested that the public hearing be continued to the August 24, 2017 meeting.

**MOTION**
Mr. Lacey moved, seconded by Mr. Cook, to continue the Floeser public hearing to the August 24, 2017 ZBA meeting.

**APPROVED**

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

Joyce Miller, who resides at 3802 Rush Mendon Road and is a tenant of Mr. Floeser’s, stated she signed a lease with the previous owner, Mr. Russell in September of 2004. Ms. Miller reviewed the construction that occurred, while Mr. Russell was the owner of the property, which resulted in the house becoming two separate living areas. She stated Mr. Floeser purchased the property in 2009.

Mr. Cook asked if Mr. Russell had told her had all the necessary permits. Ms. Miller stated Mr. Russell told her not to worry; it was all taken care of.

Mr. Clark stated that Ms. Miller’s statements show that Mr. Floeser was not responsible for turning the home into a 2-family home so this is not self-created.

Mr. Peckham stated they still need evidence of financial hardship.

**STEFANOU INTERPRETATION PUBLIC HEARING (Continued)**

Dimitri Stefanou, 6 Country Meadows Drive, Honeoye Falls, NY, consisting of 2.66 acres, bearing Tax Account No. 216.01-1-46.1, located in an RA-1 zone, came before the Board requesting a review of the CEO’s interpretation of Section 200-8N(5) of the Zoning Ordinance which states the keeping of roosters is only permitted in an RA-5 zone.

Mr. Peckham stated the Agricultural District zoning designation does not come into play relative to this interpretation. Mr. Peckham stated this was a continuation of the July 13, 2017 public hearing.

A discussion followed regarding the property Mr. Stefanou owns. Mr. Peckham reviewed the tax map which shows Mr. Stefanou owned 2 parcels. A discussion followed.

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

**MOTION**

Ms. Sciortino moved, seconded by Mr. Lacey, to close the public hearing.

**APPROVED**

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

**MINUTES**

Mr. Lacey moved, seconded by Ms. Sciortino, to approve the minutes of the June 22, 2017 meeting.

**APPROVED**

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

**MINUTES**

Ms. Sciortino moved, seconded by Mr. Bassette, to approve the minutes of the July 13, 2017 meeting as amended.

**APPROVED**

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

**GHIDIU AREA VARIANCE DETERMINATION**

Mr. Lacey moved, seconded by Mr. Bassette, that the area variance requested by Dave Ghidiu, 4143 Clover Street, Honeoye Falls, NY, consisting of 2.5 acres, bearing Tax Account No. 203.04-1-12.11, located in an RA-2 zone, to construct a 6 foot high fence in the front yard, whereas code states no fence in the front yard shall exceed four feet above ground level, be approved based on the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. Dave Ghidiu, the property owner appeared before the Zoning Board of Appeals at the public hearing on July 27, 2017.
2. Section 200-42(A) limits the height of a fence in a residential district to a maximum of four feet.
3. There is an existing fence along the front of the property. Much of this fence is approximately 6 feet in height, in a tiered construction style. Mr. Ghidiu is requesting that he be allowed to increase the height of the approximately 4 foot high section of fence to match the approximately 6 foot high fence and fill in the unfenced portion.
4. Mr. Williams, a previous owner of the property, had requested (and received) a variance to have a fence reaching approximately 7 feet in height. The public hearing for that variance was held on August 24, 2006. The facts from this previous variance are substantially the same. Namely traffic on the road, the houses proximity to the road, excessive deer population, and significant landscaping.
5. No members of the public commented at the public hearing.

**CONCLUSIONS OF LAW**

1. The requested benefit can**not** be achieved by other feasible means.
2. The request is **not** substantial, as the majority of the front yard has an already approved fence of ~6 feet height.
3. The request will **not** have any adverse physical or environmental effects, as much of the fence is screened by various plants.
4. The request will **not** have an undesirable change in the neighborhood, as there is an existing fence of this height along much of the front yard.
5. The difficulty was **not** self-created, as the existing fence predates Mr. Ghidiu’s ownership of the property. Likewise, the difficulties that led to that original fence were not of that owner’s creation either.
6. This is a Type II action under SEQR

**APPROVED**

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

**TRIPI AREA VARIANCE DETERMINATION**

Mr. Peckham moved, seconded by Ms. Sciortino, that the area variance requested by Susan Tripi, 26 Buggy Whip Trail, Honeoye Falls, NY, consisting of 1.6 acres, bearing Tax Account No. 230.04-1-7, located in an RA-1 zone, to construct a 35’ by 36’ garage (a 72 square foot shed already exists) which exceeds the 1% lot coverage allowed by Code, be approved based on the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. Susan Tripi and Richard Blodgett, the property owners appeared before the Zoning Board of Appeals at the public hearing on Thursday July 27, 2017.
2. The applicant desires to build a garage at the end of their driveway. They intend to use approximately 2/3 of this structure for storing cars, the remaining 1/3 would be used as a workshop.
3. Section 200-8C(3) of the Town Code states the total area of accessory buildings shall not exceed 1% of the lot area. The requested additional structure will bring the total lot coverage to approximately 1.75% of total lot area. In addition, 200-8C(4) states a freestanding garage does not count towards coverage, unless there is an attached garage as well.
4. Mr. Blodgett commented that the workshop would be used for woodworking hobby activities.
5. The garage will be placed on an existing concrete pad located in the backyard that previously served as a basketball court.
6. No members of the public commented at the public hearing.

**CONCLUSIONS OF LAW**

1. The requested benefit can**not** be achieved by other feasible means.
2. The request is **not** substantial, as it is an approximately 0.8% increase in lot coverage.
3. The request will **not** have any adverse physical or environmental effects, as the location in question is already covered with a concrete slab.
4. The request will **not** have an undesirable change in the neighborhood, as there are similar structures in size and use.
5. The request **was** self-created, as the residence already includes an attached garage.
6. This is a Type II action under SEQR.

**APPROVED**

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

**GARTLAND AREA VARIANCE DETERMINATION**

Ms. Sciortino moved, seconded by Mr. Bassette, that the area variance requested by Liz Gartland, 130 Drumlin View Drive Mendon, NY, consisting of 0.7 acres, bearing Tax Account No. 216.12-1-26, located in an RS-30,000 zone, to construct a 10 foot x 12 and ½ foot shed with a side setback of 13 feet, whereas code requires a side setback of 15 feet, be approved based on the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. Liz and Ted Gartland, the property owner appeared before the Zoning Board of Appeals at the public hearing on Thursday July 27, 2017.
2. The applicant intends to construct a shed just past the end of their driveway, between the existing pool and tree line. As the road curves, and the lot lines are perpendicular to it, the back of the shed is closer to the edge of the property then the front.
3. The applicant has requested a side setback of 13 feet, while the table that is section 200-74 (Zoning requirements by district) states RS-30 has a side setback of 15 feet.
4. The applicant claims they had previous plans for a larger shed, but those were scaled back when they become aware of the setback issue.
5. The existing tree line would partial obscure the structure from the neighboring property.
6. John and Tracey Mitchell, owners of the neighboring property of 120 Drumlin View Drive, submitted a letter against this action.
7. The shed will stand as part of the safety fence that presently surrounds the pool.

**CONCLUSIONS OF LAW**

1. The requested benefit can**not** be achieved by other feasible means. While the shed could potentially be located elsewhere on the property, the relocation would negate much of the desired benefit.
2. The request is **not** substantial, as it is a relief of 2 feet.
3. The request will **not** have any adverse physical or environmental effects, as an approximately 125 square foot shed is negligible from this standpoint.
4. The request will **not** have an undesirable change in the neighborhood, as existing foliage mitigates impact on neighbors.
5. The difficulty **was** self-created, as alternate methods do exist.
6. This is a Type II action under SEQR.

**APPROVED**

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

**STOTT AREA VARIANCE DETERMININATION**

Mr. Peckham moved, seconded by Ms. Sciortino, that the area variance requested by David Stott, 75 Langpap Rd., Honeoye Falls, NY for a variance at 1369 Pittsford-Mendon Rd., Mendon, known as Mendon 64, which property consists of 1.62 acres, bearing tax account #216.02-1-26, located in a business zone, to construct a timber frame structure to the previously existing patio of said property, whereas town code states there be a minimum front setback of 10’ from right of way, be approved based on the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. David Stott the property/business owner appeared before the Zoning Board of Appeals at the public hearing on July 27, 2017.
2. The applicant would like to construct a timber frame accessory above a pre-existing concrete block patio, on the front of the restaurant to enhance a usable pre-existing space to cater to patrons of the establishment and potentially increase business.
3. The structure is enhancing an already existing concrete patio area, and would be 5’ 6” from property line. It does not interfere with the existing sidewalk.
4. No members of the general public appeared before the board.
5. The project is consistent with the Comprehensive Plan of the Business district in the Hamlet.

**CONCLUSIONS OF LAW**

1. The requested variance cannot be achieved by other feasible means, as the requested structure will enhance a previously existing area.
2. The request will not have an undesirable change in the area, being as it is in the business district of the community.
3. The request is substantial.
4. The difficulty is self-created, however, the location of the existing patio and the purpose of the intended enhancement are the means by which the owner can achieve the desired beneficial effect for the business.
5. The requested variance will not have adverse physical or environmental effects.
6. This is a Type II action under SEQR.

**APPROVED**

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

**STEFANOU DETERMINATION**

Mr. Peckham moved, seconded by Mr. Bassette, that the Code Enforcement Officer’s interpretation of the Mendon Town Code Section 200-8N(5) set forth in a letter dated May 5, 2017 from said Officer to Dimitri Stefanou, 6 Country Meadows Drive, Honeoye Falls, NY which stated that, under the Zoning Code of the Town of Mendon the keeping of roosters is only permitted in an RA-5 zone, and that the keeping of a rooster on his RA-1 property is a violation of the Zoning Code, be upheld based upon the following findings of fact:

**FINDINGS OF FACT**

1. Dimitri Stefanou, the owner of 6 Country Meadows Drive, appeared before the Zoning Board of Appeals at the public hearing on July 13, 2017 and July 27, 2017.
2. Mr. Stefanou currently has one (1) rooster on his property, which is zoned RA-1.
3. Mr. Stefanou has challenged the Code Enforcement Officer’s interpretation, bringing the issue to the Zoning Board of Appeals.
4. Town Code Chapter 200 Section-8 is entitled “Regulations Applicable to All Districts”. The Board takes this to mean that this includes RA-1 Districts.
5. Town Code Section 200-8N(5) states “Roosters are permitted only in RA-5 districts”. The Board takes this to mean Roosters are excluded from RA-1 districts.
6. Town Code Chapter 86 “Definitions and Word Usage” states in 86-2(B) that “ All words in the plural number include the singular number and all words in the singular number include the plural number except as to the number of permitted structures or unless the natural construction of the wording indicates otherwise. The Board takes this to mean that “Roosters”, for purposes of the Town Code, can refer to one rooster or several roosters

**CONCLUSION OF ZONING BOARD OF APPEALS**

1. The interpretation of the Code Enforcement Officer as stated in his letter of May 5, 2017 is upheld.

**APPROVED**

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

**DISCUSSION**

Mr. Bassette stated there are references in the Code to RS 30 and RS 30,000. Mr. Bassette asked if these are two different classifications.

Mr. Peckham stated he would like to add a reference to the SEQR form when answering the adverse environmental effects question.

**MOTION**

Ms. Sciortino moved, seconded by Mr. Lacey, to adjourn at 8:45 p.m.

**APPROVED**

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