

A Regular Meeting of the Zoning Board of Appeals was held on Thursday, May 11, 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

ABSENT: Stephen Tudhope

ATTORNEY: David Hou

Minutes were taken by Katrina Allen.

Mr. Bassette opened the meeting at 7:03 pm.

MINUTES

Mr. Maxon moved, seconded by Mr. Cichon to approve the minutes from April 27, 2023 Zoning Board of Appeals meeting.

APPROVED

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

FLOWERS BY STEVE, LLC PUBLIC HEARING

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 at said property.

Mr. Bassette opened meeting at 7:03 pm.

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

Mr. Bassette said he is not sure who is all there to represent the applicant, but they are welcome to come up and sit. Mr. Bassette said they are here for an interpretation of the Code.

Daniel Brennan, Davidson Fink, representing Steve and Jenny Goodemote, 5420 Overlook Lane, Canandaigua.

Mr. Goodemote asked the Secretary if she received the Affidavit of Posting. She had not and advised a determination cannot be made without it. Mr. Goodemote said he would go to his car to get it later.

Mr. Bassette asked the Board members if they were familiar with the application. The Board answered in the affirmative.

Mr. Brennan said 977 Mile Square Road was a legal use before they received a Potential Notice of Violation from the Code Enforcement Officer (CEO) on August first. The Goodemotes brought the property in December 2021 with the sole purpose of operating it as an Air B&B. They had done extensive improvements on the property. Mr. Brennan said they invested in this capital because, as their understanding of the Code, it did not prohibit or prevent Air B&Bs or Short-term Rentals of any kind.

Mr. Brennan said the letter from CEO, Corey Gates, offers more evidence for the Board to overturn it. Mr. Gates' letter states, "Town of Mendon zoning laws simply do not support short-term rentals, special event venues, or other for-profit entities otherwise allowed in the Business District." Mr. Brennan said this was sent on August first, about one month before the moratorium went into effect. Mr. Brennan said Mr. Gates did not cite Town Code because Town Code does not, in fact, prohibit Short-term rentals; they are specially permitted. He said there the term "rental" was not defined in the Code in August 2022. Mr. Brennan said no one would argue in August 2022 his client could not rent the house as a short-term rental.

Mr. Maxon said what if Mr. Brennan considered the property is defined as a Tourist Home and a Tourist Home encompasses Short-term Rental of a single-family home. Mr. Maxon asked if Mr. Brennan would still have that same argument? Mr. Brennan said he would, because the Notice of Violation states that Short-term Rentals are not allowed in the Town of Mendon and that is simply not true. Mr. Brennan said he is hypothetically stating the Town of Mendon does support Short-term Rentals as they are specially permitted.

Mr. Maxon stated Town Code, specifically 260-13 (B) states, "Any use not specifically permitted is prohibited." Mr. Maxon stated 260-52 defines Tourist Homes, and they are not permitted in the RA-5 zoning district. He said that is how we get there; it is not a mystery.

Mr. Brennan said this is a single-family, where a Tourist Home can be used by multiple families who are essentially operating as separate families. He said this property has not been used that way and will never be used that way. He said this Board can impose reasonable conditions, and they are willing to have reasonable conditions imposed if the interpretation is overturned.

Mr. Brennan said they understand the Town is against groups of unrelated people throwing large parties that would become a nuisance for the neighborhood, and they are committed to making sure that does not happen. They are willing to have stipulations, if they are reasonable, and they will follow them. They will only rent to one family at a time. If the Board has stipulations and conditions, they will abide by them.

Mr. Cichon said the history behind 260-52 is it was implemented in the 1930s to prevent transient home owning, because this is an agricultural community, they did not want people coming here, working, and then abandoning the house two months later. They did not want homes becoming dilapidated with roofs caving in. That is why community activists did not want transient homes where it is not so much a single-family, but it is multiple families. The language was initially intended to prevent it all together. If you were going to rent or lease, it was for an extended period-of-time.

Mr. Brennan said he is not up-to-date on the history of it, but he does know that vacation homes are specially permitted and are essentially legislative findings that vacation homes are permitted in this district. But simply, a special use permit must be obtained to make sure the particular proposed use is appropriate. They are saying when it is a special use, it is allowed, and it is permitted.

Mr. Brennan discussed the Moratorium and the Town Board cannot retroact a permitted use; neither can State Law.

Mr. Maxon asked if it is Mr. Brennan's position that a Tourist Home is different than renting out a single-family home to a single-family group. Mr. Brennan said yes, that is their position.

Mr. Goodemote said they bought the property, and it was in great shape, but they put almost a \$100,000 into it. They are trying to have a high-end place for people to come and stay and visit. He said their contractor is there and can tell you they are not sparing anything making this place, safe, nice, and functional.

Mr. Cichon said their goal is to have the Goodemotes as their neighbors and have them as a member of our community. Mr. Goodemote said the Board can see in their welcome book they make a lot of recommendations. He said they like Mendon; they come here with their kids and think Mendon Ponds is great. They recommend it to people who come to stay with them. He said they have had 30 something odd stays in the past year.

Mr. Goodemote said people come in to see family for weddings, funerals, birthday parties. They do not want parties there either. It is a nuisance for the neighbors when it is all loud, but it costs them a lot of money if they damage the property. They have cameras at every door. The number of people registered are the number of people there. They make sure there are not any extra people or friends. There are a lot of local people that stay, and they have a two-night minimum, so they cannot stay one night.

Mr. Goodemote said their direct next-door neighbor is there and he can tell you. Mr. Goodemote said to John DiRaddo, 979 Mile Square Road, it has been very quiet, right? There have been no noise complaints. He agreed.

The Goodemote's general contractor spoke up, but he was advised he needs to wait until public comment to speak.

Mr. Mahood asked if the Goodemotes have any direct member support and when their closing date was. Mr. Goodemote said December third or early December 2021.

Mr. Mahood asked how they check up on the renters. How are they enforcing it other than checking a few cameras. Are they visiting or checking in? Mr. Goodemote said no; that would violate their privacy of renting it. They check the cameras when they come in and periodically to make sure there are not more cars there. If they do have a complaint, they can check and see who came in. Air B&B has stipulations and everyone registered with Air B&B has to have a driver's license registered with them.

Ms. Goodemote said prior to registering with Air B&B, they sent a letter to all their neighbors, so they had a way to contact them and vice versa. If they damaged the property or there was a party at the house, the neighbors had a way to contact them. She said their neighbor, John, and Tom across the street had some recommendations to have cameras and have a sign at the end of the driveway advising to be careful pulling out into the street.

Mr. Brennan said the decision is transparent, and the Board should look at their property and their property only. They filed the necessary paperwork with the clerk prior to the adoption the moratorium. They had the nonconformity prior to the moratorium, so it should continue to exist. If it was not in place then, he would argue the moratorium should apply then.

Mr. Maxon said they argue another type of use would be renting to a group of people not characterized as a single family. Is that right? Mr. Brennan said yes. Mr. Maxon asked what other groups of individuals who rent Air B&Bs could be characterized this way? Mr. Brennan said he rents Air B&Bs and sometimes they rent out individual rooms in different parts of the house, because it is cheaper. His clients will not run it that way.

Mr. Brennan said his clients did extensive work on the property, including HVAC, and it did not require a building permit.

Mr. Hou asked Mr. Brennan if it would have been prudent, in hindsight, for his clients to have a conversation with Code Enforcement prior to August 2022? Mr. Goodemote said this is their first Air B&B, and they looked through the Code and did not see anything.

Ms. Goodemote said they asked their realtor and their seller's realtor if there is anything they should be aware of, and they said no. Mr. Goodemote said he sent this to his realtor and he was floored by it. He said if there was anything, he would have known about it in an instant. Mr. Goodemote said their realtor knew what they were looking for when they looked around, and they trusted him. He did not realize he needed to hire a lawyer to go through the Code with him.

Mr. Brennan said he would have advised his clients then there was nothing in these suits and they would continue to operate as they had. When people buy property, they do not go to the Zoning office to see if it is legal. They continue to operate as a single-family home. There is nothing in the Town of Mendon zoning laws that state you cannot operate as a single-family. That is what they are doing.

Mr. Cichon said when he wanted to purchase his property, there was a stockade fence that was taller than six-feet, and he had a conversation with the CEO to make sure everything was okay before he closed on the property. He wanted to make sure it was legal. Mr. Brennan said he agrees. One should look before buying a property in the case of things like fences, to make sure it had a variance if needed or a permit. In the case of this property, his clients were not prohibited by the Code.

Mr. Brennan said he has one simple question for the Board. At the time of the CEO's opinion, or interpretation, was 977 Mile Square Road operating as a legal use. Mr. Brennan said there was nothing to check with the CEO.

Mr. Mahood said the use is still commercial. They are using it as a full rental. They do not live there, correct? Mr. Brennan said he is not sure what Mr. Mahood means by commercial. Mr. Mahood said it is used only for income, correct? Mr. Brennan said it is being rented out on Air B&B, and he guesses it can be characterized that way. The Town of Mendon cannot impede on peoples' property rights. The Town cannot regulate short-term stays. Mr. Brennan said, well, they can, but they cannot regulate them retroactively.

Mr. Maxon said they are forgetting section 260-52 in the Code. If they read the Code, then they saw 260-52 talks about Tourist Homes and Bed and Breakfast establishments' first criteria is the number of lodging rooms for hire. If someone is buying a house to rent it out, this should put you on notice that it applies to your planned use of the property. Mr. Maxon said to the Goodemotes, if Mr. Brennan was their attorney at the time, and he said it is alright, then they would have a malpractice suit.

Mr. Brennan said the point is short-term rentals were not regulated by the Town of Mendon, and he believes a court would agree. Air B&Bs are a relatively new concept, and he does not think 10 or 15 years ago, the Town of Mendon intended to regulate Air B&Bs before Air B&Bs became popular and certainly before they existed. People have been inviting people in their homes for decades.

Mr. Brennan said the single-family use does not regulate for profit and not for profit. Owner occupied or not. Mr. Maxon stated the Tourist Home part does. They are lodging rooms for hire. Mr. Brennan said their rooms are not for hire. It is only the single-family home that is for guests' use. It is not the individual rooms. That is the difference.

Mr. Bassette said he wants to clarify that the Goodemotes do not live there; they live elsewhere. Mr. Brennan said that is correct. Mr. Bassette thanked them as he wanted to be sure.

Mr. Bassette asked the Board if there were any other questions. There were none. Mr. Bassette asked the applicants if there was anything else they wanted to add. They did not. Mr. Brennan thanked them for their consideration.

Mr. Bassette said he believes at this time the Board members received a number of letters the secretary forwarded to them and have hard copies in front of them.

Mr. Bassette asked if any members of the public wished to speak. He was advised by the secretary to open the Public Hearing.

Mr. Bassette opened the Public Hearing at 7:39 pm.

PUBLIC COMMENT

Taylor Nichols, 366 State Route 245, Rushville, NY said he is the Goodemote's contractor. He has known Steve and Jenny for two years. He does work at their personal home and their other Air B&Bs. They do not cut corners. They invest wisely and to be honest, he thinks they are really good people. They are using a single-family home. Yes, they rent it out, but it is a still a single-family home.

Peggy Ooi, 494 Main Street Fishers, Pittsford, NY, did not receive anything from them about this use. This will change the character of Mendon. She moved here 30 years ago, and it has always been the same and kept the character before all these VRBOs. This is not Pittsford, or Victor, or Henrietta. It is Mendon. We do not want more and more commercial businesses. We want it to stay residential. We do not want businesses in a residential area. Mendon has done a good job keeping the character and rural setting. This is a unique and specific area. If they want to make money, they need to go to the business district.

Carrie Magna, 6335 East Hollow Road, Canandaigua, NY. She has known Steve and Jenny a long time. She thanked the Board for being there and hearing them. She has known the Goodemotes for about 10 years and has been through the process with their Air B&B. She said Flowers by Steve operates an Air B&B in Mendon, and they have worked tirelessly to make the house a warm and inviting space. Their Air B&B is a place for guests to come unwind and relax and enjoy all the Finger Lakes has to offer. She believes they deserve to be allowed to continue and operate for this reason: Flowers by Steve was in operation before the moratorium was in effect, and they have been operating in good faith ever since. Shutting them down would not only be unfair, it would send a message to other small businesses trying to operate in this area. Flowers by Steve and this Air B&B has been an asset to the people in the community. Their Air B&B has brought people from all over the county and the world to spend money in this community by going to restaurants and shops and other businesses. They have been good ambassadors to guests recommending places to go. She understands the concern with short-term rentals and their impact on the neighborhoods, but we cannot punish small business owners like Steve and Jenny and the Flowers by Steve team who have been doing everything right. Instead, we should find a way to regulate short-term rentals that is fair and equitable to everyone. She hopes they will allow Steve and Jenny and the Flowers by Steve team to continue to operate and be grandfathered in.

John DiRaddo, 979 Mile Square Road, Pittsford, NY said he lives right next door to the Air B&B. They share a driveway, and he owns the driveway. They have an easement. He said they had their first son in September 2021 and were nervous about an Air B&B. He feels that his situation is very applicable in this very unique case. They were worried about a problem that has yet to present itself. There has not been a single noise complaint or disturbance to him. He said the problem we are trying to solve here does not need to be solved. He has no complaints, and there seems to be no reason for them to have this problem.

Harry Rosenberg, 494 Main Street Fishers, Pittsford, NY. He has heard music coming from that general area. He cannot say where it was coming from specifically, but there is nothing worse than trying to have enjoyment of his property and have music coming though on a speaker. He

said they have no way of knowing who was doing it, and he is not blaming them. They received no notice of an Air B&B. He does not see why someone should come to a residential neighborhood and try to make money off it. He said if he wanted to open a copper smith shop to make money, it would not be allowed. There should no commercial property.

Mr. Bassette asked if anyone was online. There was no one.

The secretary, Katrina Allen, read a letter she had just received from Roberta Rink at 987 Mile Square Road, Pittsford, NY. Ms. Rink stated to let the Zoning Board know that right now, she had someone come to her door from 977 Mile Square Road looking for his friends. He and a bunch of his friends are renting 977 Mile Square Road.

Mr. Cichon asked if this is the same Roberta who wrote the letter earlier to the Board. Ms. Allen advised she was.

Mr. Brennan said he wanted to draw the Board to the definition of the Tourist Home as stated in the Code. Code specifically states a Tourist Home must be owner occupied. That is why this cannot be classified as a Tourist Home as it is not owner occupied. To be a Tourist Home, it could be multiple people and multiple families staying there. The Goodmotes and the Flowers by Steve, LLC are not owner occupied as they never stay there.

Mr. Hou advised the attorney his client needs to get the Affidavit of Posting. Mr. Goodemote went to his car to retrieve it.

Mr. Hou stated because there are no other witnesses, the Board may close this portion of the meeting and discuss how to it wants to handle this procedurally. He advised a lot has been discussed. The Board can start deliberations tonight, or they can table to it another night.

Mr. Bassette asked the Board if anyone sees a need to not close the Public Hearing. Do they want anymore information?

Mr. Bassette said he spoke with Mr. Hou, and Mr. Hou had put together a draft. There will need to be a lot of changes made to it after what they heard tonight. If anyone thinks they should proceed as is, he will go with the majority there, but he thinks it would be good if they can discuss what they can in the general sense.

Mr. Goodemote brought the Affidavit of Posting for the Board to review. It was placed in the file Ms. Allen advised Code Enforcement has also verified the sign has been posted for the required length of time.

MOTION

Mr. Maxon moved, seconded by Mr. Cichon, to close the public hearing at 7:54 pm.

APPROVED

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

Mr. Bassette advised the public they are welcome to stay while the Board has its discussion.

Mr. Bassette said he will go first. The core point seems to be what is a Tourist Home, and how it is defined. He said if there was not Section 260-52 that talks about them, if a single family or groups functioning as a single family, that would be a plausible interpretation, but we do have 260-52 with Tourist Homes. We have a moratorium, in his mind, says in affect, the Town Board saw an issue and wanted to address it before it got worse as opposed to there was no issue. He asked if anyone had any other thoughts on that.

Mr. Maxon says he agrees with Mr. Bassette with Tourist Homes encompass the property to use and operate an Air B&B. Mr. Maxon said it is an interesting concept that renting an Air B&B to groups of people who can fairly be characterized as a single family, and thus be described as a single-family use. He said that is an interesting argument, but he is not convinced at this point. He said he is not convinced this does not follow the definition of a Tourist Home.

Mr. Maxon said that a lot of the comments tonight had to do with the quality or the workmanship, the quality of the management, and also the noise. He said none of that has really anything to do with tonight. His personal opinion on whether an Air B&B should be a use to operate on this property or not does not matter. It appears to be a well-constructed property operated by management who knows what they are doing, in a place that does not bother its neighbor. The only question is whether Code supported it as a permitted use at the time that it started. That is the only question. He said he cannot get there.

Mr. Bassette said as Mr. Maxon stated, it is a very interesting view, and he is glad they had that discussion, because reading the paperwork beforehand, he could not see that. He said it is a very good different interpretation, and he would agree the definitions need some work, which is why we have got a moratorium currently in play.

Mr. Cichon asked when was the last time the Code was adopted and revised. Was it 2018? Or 2019? Mr. Bassette said there were a couple of small changes.

The Board discussed the Comprehensive Plan and the updated Code.

Mr. Hou said he believes this section of Code went under some changes in December 2021. Mr. Bassette said he believes that section has to do with Owner Occupied and the rest of it is unchanged. Mr. Bassette said that has nothing to do with what they are discussing tonight.

Mr. Maxon said one point tonight he found interesting was the distinction between owner occupied and non-owner occupied is interpreted as a single-family and a non-single-family. He thinks that is a creative and interesting argument. Mr. Bassette said he would agree with that. Mr. Maxon continued stating he does not agree with it, but it is a valid argument.

Mr. Cichon asked if there was no way this ends up a specific ruling that sets a precedence for other things going on in the community. Mr. Bassette said this is not an area variance. It just affects the one property. It is an interpretation that could, in theory, affect more than one, and in practice, it probably will not.

Mr. Maxon said if the Board was to find in their favor, it would require the Board to adopt the view that who you rent your Air B&B to defines whether you are a single-family use. Anyone who operated an Air B&B in the past that was not a permitted use would be right. They would be arguing they are not a Tourist Home, and if you are an Air B&B, then you are not a Tourist Home; therefore, can operate. It would affect more than one property, although he is not certain of the exact number.

Mr. Cichon said one thing that has not been discussed is that in the four years Mr. Gates has been CEO, he is the one person who has integrity in this Town above and beyond all. He writes people up for fences or if their cupola is too tall. He picks up on so much stuff and brings it to us to make sure people do it the right way. That is what has him puzzled, because Mr. Gates does not do a poor job. He does too much of a job sometimes, but Mr. Cichon does not think that is a bad thing. He believes we, as a Town, have to embrace that we are not Mayberry anymore. Pittsford is right there and Henrietta is right there, and Rush is changing, and Mr. Gates has to cross every T and dot every I, and he typically does.

Mr. Hou advised since the draft was already provided and can offer a basis for discussion that it sounds fairly clear the direction it is going. He would suggest they table it to the next meeting to fine tune it and have an additional discussion. The Board can also review the revised draft and make its decision at that time. He advised the Board is able to continue discussion and continue at the next meeting, too.

Mr. Bassette said that sound like a good approach and does anyone see any objections to that.

MOTION

Mr. Bassette moved, seconded by Mr. Cichon, to table the discussion until the next meeting to discuss further.

APPROVED

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

GENERAL DISCUSSION

The Board discussed its upcoming meetings.

- May 25, 2023 – McKean Area Variance
- Flowers by Steve Appeal of the Code Enforcement Officer's Interpretation continuation

Mr. Bassette said he will send some emails to Mr. Hou regarding the future revision, and if anyone has anything to add, to bring it to the next meeting.

Mr. Maxon asked if Mr. Bassette is telling them not email Mr. Hou. Mr. Bassette said let's not have a big discussion in a chat on email with all of us, as that would be a bad one. If anyone wants to reach out to Mr. Hou as his legal counsel, Mr. Bassette will not stop them. That is between you and him. He asked Mr. Hou if that sounded good. Mr. Hou said yes and to send their questions and comments to him.

MOTION

Mr. Maxon moved, seconded by Mr. Cichon to adjourn at 8:04 pm.

APPROVED

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