

A Regular Meeting of the Zoning Board of Appeals was held on Thursday, August 24, 2023 at the Mendon Town Hall, 16 West Main Street, Honeoye Falls, NY, 14472 at 7:00 pm.

PRESENT: Daniel Bassette
Dustin Cichon
Steven Maxon

ABSENT: Stephen Tudhope
Christian Mahood

ATTORNEY: David Hou

OTHERS: Town Councilperson, Tom Dubois; Steven Goodemote, 5240 Overlook Lane, Canandaigua, NY 14424.

Minutes were taken by Katrina Allen.

Mr. Bassette opened the meeting at 7:01 pm and said because there are only three members present, quorum is met, but it will need to be unanimous to move forward with any decisions.

MINUTES

Mr. Maxon moved, seconded by Mr. Cichon to approve the minutes as amended from August 10, 2023 Zoning Board of Appeals meeting.

APPROVED

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

FLOWERS BY STEVE, LLC APPEAL OF THE CEO’S INTERPRETATION OF THE CODE PUBLIC HEARING

The Zoning Board of Appeals will consider supplementing their determination dated May 25, 2023 regarding an application by Steven and Jenny Goodemote of Flowers by Steve, LLC, 5240 Overlook Lane, Canandaigua, NY 14424 for property located at 977 Mile Square Road, Pittsford, NY, consisting of 2.61 acres, bearing Tax Account No. 206.03-1-1.2. Zoned RA5, 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. The Goodemotes are operating an un-hosted short-term rental at 977 Mile Square Road.

Mr. Bassette opened the public hearing and waived the reading of the legal notice as it was published in the *Sentinel*.

Richard Franco of Davidson Fink Attorneys, representing Steven Goodemote, approached the Board. He said they have not been presented with any new evidence and is stating his objection to this hearing being necessary.

Mr. Bassette said as he understands, the reasoning is the Town attorney asked the Board to reopen the hearing.

Mr. Maxon stated it is to reconsider the determination.

Mr. Bassette said it is for clarity as the Board is not changing its decision.

Mr. Franco stated Code 260-90 states there needs to be a citation to reappear.

Mr. Bassette asked Mr. Hou if the objection changes their process. Mr. Hou said no, it does not change it.

Mr. Bassette, along with Mr. Cichon, highlight points in the supplemental determination.

Mr. Bassette said there is a bunch of talking about single-family homes, and he will not discuss it. If the Board decided a single family includes short-term rentals, it would change the whole aspect of the Town.

Mr. Bassette finished reading the determination, and said it is a better way to phrase and is all encompassing their decision.

Mr. Cichon said it clarifies the Board’s decision.

Mr. Franco said he still objects. He asked for a copy of the determination. Mr. Bassette said he does not see why not and can give him one. Mr. Hou stated it must be signed first.

The Secretary advised she will email it to Mr. Franco the first part of next week and will send a hard copy to Mr. Goodemote in the mail.

MOTION

Mr. Cichon moved, seconded by Mr. Maxon to close the Public Hearing at 7:17 pm.

APPROVED

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

**RESOLUTION – SUPPLEMENTAL DECISION ON INTERPRETATION
FLOWERS BY STEVE, LLC; 977 MILE SQUARE ROAD**

WHEREAS, an appeal and interpretation request by Flowers by Steve, LLC (the "Appellant"), 977 Mile Square Road, Mendon, New York (the "Property") was received by the Clerk of the Town Zoning Board of Appeals ("ZBA" or "Board") 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 serial short-term rental business operation was in violation of Town Code § 260-13 (B), that serial 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 a duly noticed public hearing 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 afforded opportunity to be heard; and

WHEREAS, at said public hearing(s) all who desired to be heard were heard and their statements 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 SEQRA action; and

WHEREAS, the Board has carefully considered the appeal and all of the statements and submissions by the Appellant, the CEO, the Town, and all others who wished to be heard; and upon consideration of the record and the Town Code, after due deliberation thereon, rendered a Decision in this matter on May 25, 2023, affirming the CEO's Determination and finding 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; and

WHEREAS, the Board has become aware that Appellant has commenced a Civil Practice Law and Rules Article 78 proceeding against CEO Corey Gates and the Town of Mendon and its Zoning Board of Appeals filed in Supreme Court for Monroe County on June 5, 2023, Index No. E2023005825, asserting among other claims that the Board's Decision of May 25, 2023, was arbitrary and capricious and contrary to the Town Code; and

WHEREAS, the Board is now required by law as part of the Article 78 proceeding to prepare an administrative return and answer in order to defend against such claims; and

WHEREAS, the Board has reviewed matters relevant to the court proceeding with the Town Attorney and has concurred with counsel that some clarifications of its actions and reasoning are in order with regard to its aforesaid Decision on Interpretation to include some information, correct some statements and eliminate issues based on possible confusion about parts of the Board's process and explanations for the findings and conclusions made; and

WHEREAS, the Board conducted another duly noticed public hearing regarding Appellant's appeal in accordance with the law on August 24, 2023, at which the Appellant and/or its representatives and members of the public were present and afforded opportunity to be heard; and

WHEREAS, at said second public hearing all who desired to be heard were heard on the matter and their statements and any submissions they wished to make were received into the record of the proceedings; and

WHEREAS, the Board has carefully considered the appeal and all of the statements and submissions by the Appellant and its counsel, the CEO, the Town, and all others who wished to be heard at the public hearing held August 24, 2023, and the prior hearing held May 11, 2023, and upon consideration of the entire record and the Town Code, after due deliberation thereon, the Board proceeds to render a supplemental decision in this appeal as set forth below:

NOW, THEREFORE, BE IT RESOLVED that the Zoning Board of Appeals for the Town of Mendon does hereby supplement the administrative record of the Board's decision-making process in the appeal of Flowers By Steve, LLC of the Determination by CEO Gates, as well as clarifies some findings, determinations, and explanations with respect to its Decision on Interpretation of May 25, 2023, as follows:

The Zoning Board of Appeals for the Town of Mendon, New York (the Board) is the local administrative body charged with enforcing, interpreting, and applying the zoning provisions of the Town of Mendon Town Code to specific property applications or disputes.

The Board clarifies its administrative record information in this matter to note that the Town's Comprehensive Plan, adopted February 8, 2021, is part of the Board's record for this matter as the Board takes cognizance of the Plan's purpose and planning in every decision reached by the Board, even if not specifically referenced, as a fundamental underpinning for every property decision made by the Board. A copy of that document may be accessed at the Town's official website at https://townofmendon.org/wp-content/uploads/2021/03/Mendon_Comprehensive_Plan_Adopted_2-8-2021.pdf.

In addition, the Board clarifies that its administrative record information in this matter shall expand to include all statements and submissions provided to the Board at the public hearing held August 24, 2023.

The Board's Decision on Interpretation dated May 25, 2023, concluded 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. ZBA Decision on Interpretation dated May 25, 2023 at 1-4 ("ZBA Decision"). This Supplemental Decision on Interpretation affirms that finding and conclusion and provides a fuller explanation for that conclusion in the public interest in light of the pending litigation challenging the Board's action on Appellant's appeal.

As relevant to this proceeding, the Board found that the Property at 977 Mile Square Road in the Town of Mendon is located in an RA-5 Residential Agricultural District and contains one single-family dwelling as permitted. The Town Code differentiates between businesses and residences and provides that there can be only one principal use to a property. MTC §§ 260-2; 260-8 (B). Therefore, either a property is used principally as a residence or a business. The Town Code expressly limits use of the properties in the RA-5 Residential Agricultural District to residences and some agricultural activities, with limited home occupations. Town Code § 260-13. The Town Code also plainly states: "Any use not specifically permitted is prohibited." MTC § 260-13 (B). As appears in the record, Petitioner acquired the Property at 977 Mile Square Drive on or about December 7, 2021, and commenced its rental business in the summer of 2022, and thus the Board's analysis of the Mendon Town Code for this appeal consists of Code provisions in effect at such time, without regard for subsequent changes to the Town Code.

Thus, in order to operate its rental business of the Property and residence thereon without violating the Mendon Town Code, Appellant was required to establish that its use of the residence on the Property as a rental business was a permitted use in its RA-5 Residential Agricultural District. Otherwise, such use was expressly prohibited. MTC § 260-13 (B).

The record is clear that Appellant's rental business of the Property did not involve agriculture or farming, and so was not a permitted use in the RA-5 District. MTC § 260-13 (B). The record is also clear that Appellant's short-term rental business of the Property was not a home occupation as permitted with or without a special use permit. MTC § 260-13 (D) (4). Consequently, Appellant's rental business of the Property was prohibited under the Mendon Town Code and was not unregulated as Appellant claims. MTC § 260-13 (B).

The Board has found that Appellant's rental business of the Property is essentially operating a tourist home, and so stated that "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...." ZBA Decision at 4.

The Mendon Town Code does authorize the operation of a tourist home in the RA-5 Residential District with a special use permit. MTC § 260-13 (D)(13). “Tourist home” is not specifically defined in the Mendon Town Code and so it must be construed to have its “usual and customary meaning.” MTC § 5-4. A tourist home is commonly defined as a house in which rooms are available for rent to transients, as the Board previously stated. ZBA Decision at 3. Other definitions add refinements specific to a place or time or concern, but none of the common definitions of “tourist home” differ substantially from the core concept of a residential home with available rooms for temporary lodging to visiting tourists for a fee. *See, e.g.*, Webster’s New Universal Unabridged Dictionary at 2002 [1996] (tourist home means a private home with rooms for rent, usually for one night, to tourists, travelers, etc.); <https://www.lawinsider.com/search?q=tourist+home> (“**tourist home**” means a private home or condominium that is not occupied by an owner or manager and that is rented, leased, or furnished in its entirety to transient guests on a daily or weekly basis).

Appellant’s description of its rental business demonstrates that it rents the Property and its residence to people looking for short-term housing at 977 Mile Square Road in Mendon for a fee. This rental operation is essentially a tourist home as commonly understood, with the only wrinkle being that the Property is rented in its entirety for a short period to ever-changing renters and so *all* the rooms of the house are included with the rental fee, and which would exclude the traditional homeowner, had one normally occupied the residence at the Property as would traditionally be the case.

The Mendon Town Code obviously cannot specifically deal with every situation that could occur and so when a zoning dispute arises it is the responsibility of the Board to investigate the facts, interpret the Code when appropriate and apply the Code to new situations and particular facts involved in a dispute appearing before the Board for local resolution. Unless a matter of Code interpretation or application is abstract, whether or how the Mendon Town Code applies in a specific situation depends on an investigation of the particular facts and particular property, a finding of what facts are significant under the circumstances, and application of the Town Code to the specific facts found significant as a matter of local interpretation. Even though sometimes a matter can be construed or interpreted in different ways, the Town of Mendon has determined that its Zoning Board of Appeals—made up of designated members of our community who live here—shall be the arbiter of zoning issues under the Mendon Town Code to resolve disputes with reasoning that is rational and supported in the record.

Here, after investigation including a CEO assessment and two public hearings, the Board has found that the record facts demonstrate that Appellant’s rental business is essentially the operation of a tourist home, despite the minor deviation that all the rooms of the residence are being rented to visitors for a short-term stay at the Property. Appellant acknowledges that neither it nor any of its members live in or utilize the Property to conduct their own living activities apart from the business of short-term rentals of the Property, and so there is clear record support for the Board’s fundamental finding.

The Board has further determined implicitly that the minor matter of *all* the rooms in the residence being rented does not significantly change the meaning of “tourist home” under the Mendon Town Code for purposes of interpreting permitted uses in the RA-5 Residential Agricultural District. Decision at 3. The concept of rooms of a residence being available for rent to transients as the meaning of a “tourist home” is general enough to include *all* the rooms of a residence, and the Board has implicitly so found. *See* ZBA Decision at 3. To clarify this point, the Board explicitly finds that Appellant’s rental business of the entire residence at the Property amounts to the operation of a tourist home under the Mendon Town Code, and a tourist home is not permitted in the RA-5 Residential Agricultural District without a special use permit as Section 260-13 (D) provides.

Appellant contends that its rental business is not prohibited under the Mendon Town Code because the Property is rented only to “single families, or groups functioning as single families” and Section 260-13(B)(1) lists permitted principal use in the RA-5 District as “single-family dwelling.” Decision at 3. A “single-family dwelling” is specifically defined in the Town Code as “a detached residential dwelling unit ... designed for and occupied exclusively by one or more persons living as a single housekeeping unit.” MTC § 5-4 (SINGLE-FAMILY DWELLING). Implicit in the Board’s Decision and Town Code definitions is the concept that people “living” in a single-family dwelling as a single housekeeping unit in a residential district are not merely visiting the area but have chosen and committed to make a home in Mendon—that is, a relatively permanent base of operations for the conduct of life in all its many aspects, generally returning each time out to their Mendon residence as “home.” Thus, even though Appellant’s rental business operates a residence at the Property that apparently is rented only to “single families, or groups functioning as single families,” such people are not “living” at the Property in the stable sense of committing to the Property as their home but are merely visiting temporarily with the intent to move on in a short period. Use of Appellant’s residence in the RA-5 Residential Agricultural District in such a temporary manner by visitors to the area amounts to a “tourist home” under the Mendon Town Code, which operation requires Appellant to request and obtain a special use permit prior to operating its rental business at the Property.

The record shows that Appellant’s rental business admittedly rents the residence at the Property to a series of individuals, families or groups arguably functioning as single families in a rapid turnover each week or so, self-styled as short-term rentals. Current occupants renting Appellant’s residence at the Property at any point in time are typically unrelated to the previous week’s occupants or the following week’s occupants and so do not constitute a single family or equivalent “living” in the RA-5 Residential Agricultural District. Indeed, no “family” within the meaning of the Town Code lives so disjointedly and adds and subtracts family members on a weekly basis or so as Appellant’s serial rental business involves. As is evident, Appellant’s rental business is not a single-family dwelling use of the Property in the RA-5 Residential Agricultural District within the meaning of the Mendon Town Code. Accordingly, the Board finds that Appellant’s rental business does not involve a “family” “living” at the Property as their home as contemplated for single-family dwellings under the Mendon Town Code in the RA-5 Residential Agricultural District. Thus, as the Board previously found: “Renting the Property to a series of individuals, families, or groups cannot constitute use as a single-family dwelling.” ZBA Decision at 3.

A major purpose of the RA-5 Residential Agricultural District under the Mendon Town Code is to preserve and maintain the residential atmosphere, appearance, and character of residential living with stable neighbors and neighborhoods to promote a strong sense of community in accordance with the Mendon Comprehensive Plan. *See* MTC § 260-13 [A]. *See also, e.g.,* MTC 260-35 [A] Home occupations; Mendon Comprehensive Plan. Operating a business other than normal farming in the RA-5 Residential Agricultural District is inconsistent with residential living in such district. Appellant’s rental business at the Property requires careful consideration and balancing of residential and business interests which are addressed for a specific property and proposed business through the required special use permit process. *See* MTC § 260-13 [D].

Although Appellant contends the Mendon community sustains no harm from its rental business because there have been no complaints about noise or traffic to date, the Board finds there is harm occurring to our local community from Appellant’s noncompliance with the requirement to obtain a special use permit for the Property before operating short-term rental business.

The continual weekly or so churn of occupants at the Property from Appellant’s rental business is incongruous with the traditional residential neighborhood sought to be fostered in the RA-5 Residential

Agricultural District. Such traditional neighborhoods establish a fairly stable community where neighbors learn who their neighbors are, develop relationships with them, and together address issues that may arise in the neighborhood. Short-term visitors play no significant role in knitting the fabric of local community residents together, and the transient nature of Appellant's short-term rental business without an owner living there would seem to prevent development of the neighborhood at the Property because no familiar and long-term relationships will likely occur with the transient rental occupants. Moreover, no owner is present on the property through all seasons and living there like a normal residential family would be, inhibiting development of relationships with the neighbors and leaving a social hole in the local community at that location.

At present, Appellant's rental business is operating only under its own rules and sense of propriety that could change at any time as the business proceeds and determines to improve its profits—and could also change with the next rental group. Appellant's rental business is operating contrary to the Town Code as discussed and without appropriate conditions imposed through a special use permit to protect and preserve the residential character and neighborhood to which the Town and its residents are entitled. Appellant's argument that the Town is not injured by noncompliance with its zoning restrictions essentially negates any benefit to the Town and its residents of fundamental residential zoning restrictions imposed for the health, safety, and general welfare of the people of the Town of Mendon. See MTC § 260-2. As the State of New York has legislatively determined that zoning is a beneficial state policy when adopted by towns, as the Town of Mendon has done, Appellant's argument of no injury from noncompliance essentially nullifies State and Town policy and Town regulations imposed for the health, safety, and general welfare of the people of the Town of Mendon merely to favor Appellant's business self-interest as a special interest above the zoning law. See Town Law § 261; MTC Chapter 260. Finally, the Town is injured by the continued presence of only transient visitors in the local residential neighborhood at the Property instead of stable residents who are able to contribute to the development of the community by their long-term presence, incorporation into the neighborhood and participation in the Mendon community as long-term residents. The Town is entitled to address these various issues on a property-specific basis through the special use permit process, which process has been wrongfully avoided by Appellant to date as the CEO determined and the Board has upheld.

Appellant argues that its rental business does not quite fit the Town Code provision for "tourist home" under Section 260-52 because the entire residence is rented, not just some rooms, and neither it nor its members ever reside there while owners of tourist homes typically do, and so Appellant's rental business cannot constitute a "tourist home" under the Town Code. Appellant misapprehends the relevant Town Code provisions regulating its rental business. As discussed, Appellant's rental business is using the Property as a tourist home, which use is prohibited in the RA-5 Residential Agricultural District without a special use permit. MTC §§ 260-13 (B), (D)(13). As Appellant does not have a special use permit for its rental business at the Property, its use of the Property as a tourist home is in violation of the Mendon Town Code as CEO Gates determined and as this Board is reaffirming in this Supplemental Decision on Interpretation.

Whether Appellant may obtain a special use permit for its rental business at the Property is a separate issue not presently before the Board. Section 260-52 provides for the conditions of a tourist home that qualifies for a special use permit, but does not itself define "tourist home" nor describe the only kind of tourist home that can exist under the Mendon Town Code. As is demonstrated on this appeal, there are various kinds of tourist homes and the kind which qualify for a special use permit without variances are set forth in Section 260-52 as having certain characteristics such as being owner-occupied to foster stable residential neighborhoods. Appellant's belief that Section 260-52 defined "tourist home" as used in the Mendon Town Code is misplaced and does not excuse its noncompliance with the Mendon

Town Code requirement for a special use permit to operate its serial rental business at the Property in the RA-5 Residential Agricultural District.

For the reasons discussed in the Board’s May 25, 2023 Decision on Interpretation, and in this Resolution regarding its Supplemental Decision on Interpretation, the Board reaffirms its May 25, 2023 Decision on Interpretation that CEO Gates’ Determination of August 1, 2022 is upheld as a correct interpretation of the Mendon Town Code as it existed prior to the enactment of Chapter 236 to the effect that Appellant’s short-term rental business of the residence at the Property is not and was not a permitted use in an RA-5 Residential Agricultural District without a special use permit. MTC §§ 260-13 (B), (D)(13).

The foregoing Resolution was offered by Mr. Cichon and seconded by Mr. Maxon at a meeting of the Zoning Board of Appeals held on Thursday, August 24, 2023.

Following discussion thereon, the following roll call vote was taken and recorded:

Daniel Bassette Aye

Stephen Maxon Aye

Dustin Cichon Aye

Approved: 3 Ayes, 0 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 August 24, 2023, a quorum being present.

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 August ____, 2023.

Michelle Booth, Town Clerk

Town of Mendon

MOTION

Mr. Cichon moved, seconded by Mr. Maxon to approve the supplement to the determination.

APPROVED

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

GENERAL DISCUSSION

The Board discussed upcoming meetings.

MOTION

Mr. Maxon moved, seconded by Mr. Cichon to adjourn the meeting at 7:19 pm.

APPROVED

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