

**ZONING BOARD OF APPEALS**  
**TOWN OF LLOYD**  
**MINUTES**  
**Thursday, February 9, 2023**

**CALL TO ORDER TIME: 7:00 PM**

**PLEDGE OF ALLEGIANCE**

**ANNOUNCEMENTS: GENERAL, NO SMOKING, LOCATION OF FIRE EXITS, ROOM CAPACITY IS 49, PURSUANT TO NYS FIRE SAFETY REGULATIONS. PLEASE TURN OFF ALL CELL PHONES.**

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**Attendance:** Board Members: John Litts, Paul Gargiulo, Bill Brown, Russ Gilmore, Shawn Zerafa, Mike Guerriero (Town Board); Board Staff: Anthony Giangrasso, Paul Van Cott and Sarah Van Nostrand

**Absent:** Board Members: Jessica Van Houten.

**New Business**

**Hidden Gems NY Stone Home LLC: 383 Upper North Rd, SBL #80.3-1-30.200-Appeal**

Applicant is appealing a determination from the CEO regarding the denial of an application to register 2 Short-term rental (STR) units.

Nanci (Property Owner) At the time that she was looking to purchase the property she called the zoning office and asked about Short-Term Rental Laws in regards to what is in place or going to be in place. After speaking with the zoning office, it seemed that the laws that were going to be in place were in line with what she was planning on doing, so they went ahead and bought the home. At the time what she didn't know was that only one was going to be allowed one short-term rental. The home is a two-family and they had always been planning on two short-term rentals. If they had known that only one short-term rental was going to be allowed, they probably wouldn't have bought the home as wasn't something financially they could do. The house had a lot of remodeling done, since they have bought it and there is still a lot more to go. People who go there love it, they love

being in Highland, they intend for it be a vacation rental not just for her family, but for other families. She is here tonight to appeal the determination that Dave Barton made regarding that only one short-term rental is allowed in the home. With two rental units Ulster County would receive more money in taxes. There would be more people coming to Highland and the hamlet and seeing all the stores and restaurants and enjoying all the hamlet has to offer. She has no real neighbors as she is in the LI zone and there is nobody near by that will be impacted by having 2 short-term rentals. She has cameras already installed facing the parking areas to monitor who is coming and going and plans on installing noise monitors in the units themselves, so they can keep track of excessive noise, so they are aware of what is happening. If she can only have one then they will not be able to financially continue with their plans for the property. Then there is a legal reason, the recent short-term rental law that was passed, it states that the definition of a short-term rental is “The STR may occur within an entire dwelling, in rooms within a dwelling, or in a separate attached or detached dwelling unit or units on the parcel, but shall not include camping”. Her reading of the law is that one permit can have 2 listings, nowhere in the law does it actually say how many units can be there and how many listings can be there in a permit. Having two units are legitimate with the wording of the law as we understand it, they are requesting that this body allows them to have two short-term rental units in one dwelling.

Kyle (applicant’s agent and lawyer) said that he doesn’t know if the code’s intent was to restrict the number of STR’s in a two-family home or even a one-family home. He feels that this code could use some tidying up in the future. Where Dave focused his attention was under the section labeled ownership of properties. In paragraph 3 it states that “Only one permit per property is allowed at one time”. As Nanci pointed out there’s nothing in the code that says you can only have one STR per permit and there is stuff in the code that indicates you can have more than one STR per permit

because the code's very specific that you can more than one STR per dwelling unit. The other thing that is problematic with that sentence is that it uses the term property, which is not defined in the definitions, so it doesn't really suggest what a property is. A dwelling unit is defined as "A building or entirely self-contained portion thereof containing complete housekeeping facilities for only one family, including any domestic servants employed on the premises, and having no enclosed space (other than vestibules, entrance or other hallways or porches) or cooking or sanitary facilities in common with any other dwelling unit". It also provides a definition for a short-term rental and then a short-term rental unit. He does not know why the reference there is to property as opposed to what it could have said only one STR per property is permitted, but it doesn't say that or it could have said that only one STR per dwelling unit is permitted. If one was to interpret it for the reading that is it doesn't indicate and nowhere else in the code does it say only one STR per permit. One would have to read quite a bit into the code and even embellish it a bit to come up with that sort of interpretation. As Nanci pointed out the definition of Short-term transient rental (STR) is "The use of a parcel for the rental or lease of any or part of any residential use single-family and two-family dwelling unit, for a period of less than 30 days. The STR may occur within an entire dwelling, in rooms within a dwelling, or in a separate attached or detached dwelling unit or units on the parcel". Well obviously you are only going to have one STR person per unit and the use of the units there is an indication that you can have more than one STR within the entire dwelling unit. Further down there is further conformation under short-term transient rental unit and again there it uses plural, "Dwelling units or rooms used as STRs". It would indicate from the definitions of what a STR is that a dwelling unit may have more than one and one could say that you can only have one permit per dwelling unit. Again the code doesn't say that it says one per property. We don't know what property means, we can imagine it to mean dwelling unit and it doesn't say you can only have one STR per dwelling unit, so right there is nothing restrictive in the code that would limit the number

of STRs per dwelling unit. Another point is if you go to the code section K(4) this is important here is that the code needed to accomplish was that it needed to recognize that STRs already exist in the town and as a result there are legal issues with outlawing a prior pre-existing use because there are property rights at stake. Nanci went to the Town Board on this issue because the home is already a prior pre-existing non-conforming use as it is located in an industrial zone. Also, Nanci does qualify as a pre-existing STRs because the STRs existed prior to the creation of the code, both STRs were being rented out at the time, so the Town Board wanted to recognize that and the importance that because Nanci was in a zone other than the originally permit zones they wanted to make sure that there was something specific in the code that addressed that, which is where paragraph 4 comes in. It says, "In zoning districts where STRs are not an allowed use, qualifying, preexisting STRs shall be allowed to operate, subject to a special use permit approved by the Planning Board, biennial application renewal and an annual fire and safety inspection, pursuant to the limitations for nonconforming". It's clear that you have two pre-existing STRs, which he believes that there would be legal issues by constricting it as a result of the new law. Beyond that its specifically addressed in the code that the pre-existing STRs would be allowed to operate subject to the special use permit. That section was added due to Nanci's lobbying to the Town Board in advance of this. He mentioned that if there is any ambiguity in the law then it has to be decided in favor of the property owner.

Paul V. said that procedurally the ZBA should set the public hearing at tonight's meeting for the appeal. As the chairman said this meeting is more a fact gathering discussion and introduction of the appeal. He said that looking at the code and the applicant's position the code is pretty clear, if you think about it in the context of the big picture context where you look at the use table. What is intended here was to allow a short-term rentals as an accessory residential use in residential districts

and also Light Industrial. The intent was to put sideboards around them to make them more residential. The idea of the regulation is to allow these uses, subject to a special use permit and are going to put sideboards around it in terms of the operations to try to make them more like residential uses. What he has seen in other in other communities is that you may have an accessory apartment that the owner would like to rent out, to help pay for their property taxes. Getting more people here to visit the town is also important. The town wanted to provide reasonable regulations for STRs in residential zoning districts at the same time the code speaks to the difference between STRs as a rental unit or units and hotel rooms for example. In the definitions you are talking about the use of a parcel for a short-term rental purpose. If you have a short-term rental and you have a single-family dwelling, you can rent that out. You can rent out a room within your single-family dwelling while also living there. If you have an accessory apartment in the back, over your garage, you can rent that out and live in the single-family dwelling. Or you can rent out both the house and the apartment over the garage as a short-term rental, but the idea is to rent it out to one family or entity, not to have separate rentals. The idea is to not have a single-family dwelling with a number of cabins around the property and all of sudden you have 4 or 5 different rental units. If you read it all together what the code intended in terms of what would be appropriate in residential zoning districts, that's something that is more appropriate in a district that would allow a hotel or where you can have multiple different users coming in and having different rooms. If you have multiple units or multiple rooms in a residential area, you have multiple different people vacationing in a neighborhood at the same time and the impacts will become cumulative. As for the pre-existing status he has given that some thought, but he hadn't heard back from the applicant and he thinks that needs to be discussed further. If the board wants he can do something more formal either before the hearing or after.

Kyle said that he understands Paul V's points, but he believes that the code does address the multi-family dwellings and structures, which would address Paul V's issue that he brought up. Specifically, however it does say one- and two-family homes are permitted to be used as STRs.

Paul V. said that the primary idea is that you have one family taking over the principal dwelling and the apartment over the garage because they have extra people which is okay. That is the type of short-term rental that the town was seeking to allow in residential neighborhoods. If you are going to have one-family in the main dwelling and another family in the apartment, the impacts are potentially different because you have more people, more cars, more noise, different parties.

Kyle said that if there is something that Paul V. wants to put in writing for the board it will help him address the issues at the hearing.

John said that he is not sure the board is at that point yet, but it's not a bad idea. He does think the board should set a public hearing at this meeting, gather a little more information to allow the board to hone in the direction that the board is going to take.

John asked for a motion to set a public hearing for next month.

Motion made by Russ, 2<sup>nd</sup> by Bill.

All ayes, motion passed to set public hearing for March 9, 2023.

Russ asked about the pre-existing is that prior to her ownership?

Kyle replied no.

Russ asked so it's not the history of the building?

Nanci replied that's its been since December.

**Administrative:**

**Minutes to approve:**

January 12, 2023

John asked for a motion to approve the minutes.

Motion made by Russ, 2<sup>nd</sup> by Bill.

All ayes, motion passed to approve the minutes.