

ZONING BOARD OF APPEALS
TOWN OF LLOYD
MINUTES
Thursday, March 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.

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

Absent: Board Members: Shawn Zerafa

Public Hearings

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.

John asked for a motion to open the public hearing.
Motion made by Russ, 2nd by Paul G.
All ayes, motion passed to open the public hearing.

Kyle (applicant's agent) said that he will wait for the board's counsel to submit something and then he will have an opportunity to reply.

John asked Paul V. if he prepared a narrative for the board?

Paul V. replied that he didn't as the board wanted to discuss it more and talk about it more at this meeting.

John said that he feels the law is very clear about one STR per property. He knows that there was a discussion about the definition of property, in his eyes the definition of property is the SBL (Section-block-lot number). He feels it is very clear, he understands that there is some ambiguity, but he thinks the spirit is that its one per property, one short-term rental per property. If it wasn't it would be a hotel or something of that nature. If they hold to not having one, if there is six bedrooms in a house that means you could have six short-term rentals, which does not make sense to him.

Bill said that people should stick to the laws that are written in the code and not try to change them. The board received a letter from a neighbor regarding the septic system.

John said the letter the board received does not apply to what they are deciding, that's for a special use permit which is for the Planning Board. What they are deciding now is Dave's (Code Enforcement Officer) determination it really does not apply.

Paul V. said that it doesn't apply, it has nothing to do with the boards deliberations, what the board has in front of them is that they are looking at the determination that Dave made which dealt with the question of whether there could be more than one STR rental on a property. He agrees with the chair on the clarity of the law, but he thinks that Dave's determination, he thinks the board should consider potentially modifying the determination in one regard. He made the point in his determination that the language only one permit per property is allowed at one time. Is construed to mean that only one dwelling unit, either a single-family dwelling or part of a single-family dwelling, basically either one or the other of the two dwelling units on this property could be used as an STR and that doesn't acknowledge the fact that the entirety of the building the two-family dwelling could be used as a STR. The main point is that the STR regulations try very hard to distinguish STRs which are sort of a modified residential use where someone is renting out their house or renting out a room in their house or renting out an accessory apartment as part of their property. They are distinguishing that and you are only renting to one party, renting to one family, they are distinguishing that from a hotel or a bed and breakfast. With a hotel or a bed and breakfast you can rent out simultaneously to different parties, which is usually what you'll see, you'll have 4 or 5 different families, coming in with 4 or 5 different cars to stay in a b&b same with a hotel. You have how ever many rooms in a hotel with different families in them, all their cars with all their other potential impacts. A short-term rental is different and the way Lloyd has set it up is really focused on saying if you are going to do this you are going to do in either in a single-family residential property or as part of a two-family residential property and you are going to have one STR. The definition is clear it says the STR, it doesn't say the STRs. He thinks that is a important distinction that the law tries to make and when you are looking at an interpretation or Dave's determination and the boards review of that, the board has to take into account the whole law and the intent of the law behind it. The other thing he wants to point out is that there is a separate question that the applicant has raised about the pre-existing status of their STR.

John said that really is not in front of the board, so that would have to go back to the building department to make a determination on that. The board wouldn't be able to do anything with it until it goes back to them.

Paul V. replied exactly.

Kyle said that on the second point the building department made a determination that no STRs are permitted as they didn't even grant the single STR from what he can recall. It was very particular to this property that it was denied any STRs it appears to be, he doesn't know if it was an oversight or not. It's the totality of the decision as for whether or not for this particular property given the interpretation of the code, whether more than one STR would be allowed.

Paul V. said that the building department didn't deny anything because if you have a pre-existing STR it goes to the Planning Board for a special use permit review. The building department's

determination was limited to whether there could be more than one STR on the property. The Zoning Board doesn't have in front of it any information except for what you have provided about whether or not this is a pre-existing STR, so that information really needs to be considered by the zoning officer and a determination made before it could be brought in an appeal to the ZBA.

Kyle said that is one of the ambiguities he found in the STR code, so it says in two separate places that the application goes to the building department, which his understanding is that it gets forwarded to the Planning Board, which is the way it reads. The question is why did it not get forwarded to the Planning Board from the building department?

Paul V. said its because the determination was made that you were seeking two STRs for your property and the determination was made that you could only seek one.

Kyle said that its confusing to him that it goes to the building department then it gets sent to the Planning Board and that step never happened. Instead they just got a determination saying they cannot have two STRs, so how does he get it to the Planning Board?

John said go to one STR skip this board and go to them.

Paul V. said he believes that making the determination that you can only have one. Maybe a determination on the pre-existing status hasn't been made yet, but again its not in front of this board.

Kyle said he is not conceding on the issue of two STRs as if the town intended that why didn't it say one STR per parcel? Then he wouldn't even be here. He knows the board is doing the best they can by figuring out what the spirit of the code is.

Paul V. said that he understands the points being made based on the way Kyle is interpreting the code. He recommends to the board that it is clearer than the points being made.

John said where he is basing it for himself is subsection H paragraph 3 "Only one permit per property is allowed at one time." The applicant is saying how many STRs per permit, he thinks the spirit is just one. As above that it mentions that hotels, motels, resorts, inns and bed & breakfasts that says to him that if there are going to be a bunch then its going to be in that category.

Kyle said that he agrees and that's way he interprets it. All he is saying is that he had to interpret it, what the code could have done if they meant it, they could have said, "Only one STR per permit or one STR per property," the code does not say it. Then there are other sections that the term STR is plural and in the definition it is plural which he pointed out in his submission.

Paul V. said that if you look at the definition of STR it talks about the use of the 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.

Kyle said go to the next definition, it says dwelling units or rooms used as STRs.

Paul V. said his point is that it is talking about one use as a STR which can be the whole or part of a

property, so in your case you have two dwelling units if you wanted to live in one and rent one out as an Airbnb you could do that. If you wanted to rent both of them out to one family, so they take over the whole building you can do that, but the law talks about one STR and if you don't do that then every bedroom in your house can be rented out separately as an Airbnb.

John said as a short-term rental and then it would be an Airbnb.

Paul V. said then you get onto a slippery slope, then basically how would it be any different than a bed & breakfast? For a bed & Breakfast you only may serve a meal, you don't have to serve a meal, you could serve a meal at the STR.

Kyle said that you could, the reason you don't get into the motels, hotels and campgrounds because this property is limited to a 2-family home, there are only so many STRs that you could possible get out of a 2-family home.

Paul V. said that you could have 8 bedrooms and that's all a bed & breakfast is. It's not in a dwelling unit, it's in a room. When you go to a bed & breakfast you stay in a room. He asked how many rooms are in the house?

John said that they were getting off track.

Kyle replied to go back the board's position on the issue regarding the other point that he had raised at the meeting that the code actually permits pre-existing STRs to continue.

Paul V. said pre-existing STRs throughout the town.

Kyle says that pre-existing STRs shall be allowed to operate subject to special use permit, so the board position is that there is not going to be a determination as to whether or not that applies without going back to the building department?

John replied yes, it would have to go back to the building department for determination whether it was pre-existing or not before it would get to the board.

Nanci (property owner) asked that would go thru the appeal process again?

Kyle said that it would be only if the building department said something adverse to what your position is then yes you would have to appeal again. If the building department says no you are grandfathered in under this section.

John said then you would not come to this board again, then it would go to the Planning Board.

Paul V. said that there are a few options, it could be said that none of the STRs are pre-existing, one of the STRs is pre-existing, or both are pre-existing.

Nanci asked why were they sent to this board? That is what she doesn't understand, as Dave said that they had to go to the ZBA.

John said that you came to the board because Dave feels that there is only one short-term rental per

property that's the way he interpreted it. You said nope it's 2. He cannot just say yes or no, it's got to come to the board. The board can then say, you know Dave you're right or nope the applicant you're correct. Then it ends for the board, it's either a yes or no and then you go back to them or that's it. If it is grandfathered in or you say its grandfathered in you go back to the building department and they make a determination on that, separate from where the board is now, then you either come back to the board or you don't.

Paul V. said procedurally there are a couple of options, one would be to continue the public hearing and the applicant can go back and have that conversation with the building department or if you prefer to move forward and make a determination on the issue that is in front of you.

John said that he will pass it back to the applicant as they can do a straw poll and then they will say okay do you want to do it now or do you want to go back to the building department and come back.

Kyle said let him have a chat with his client and see if anyone else has any comments and then call them back?

Paul Souleotis (395 Upper North Rd) said that he is here to voice his opposition to this project. One as the code points out the home is in the Light Industrial Zone which is not listed in the rules. Additionally, when the previous owner was there, he used it as his main home and he rented the unit on the north side for long term. Parking has been an issue there ever since the previous owner started renting the unit out, they would have to park on the grass, during adverse weather access in and out of the property on both sides has been horrible, the ground has been torn up, it's icy, it's muddy. Even in winter months they park on the road or across the street. Further, there are issues with the septic, the septic has been oozing effluent for years it's been out on the road, in his yard, it got to the point that he had to dig a trench outside his property to catch it and run it down to the ditch. The previous owner attempted to fix it, but all they did was put more fill on top of the septic system which did not address the problem at all. His personal experience with short-term rentals is that the renters have zero regard for adjacent property owners, they walk all over the property, they walk their pets on the property.

John said that this is not an application for a short-term rental, this is only a determination. Your points are very valid they are not for this board they are for the Planning Board. What they are doing here is that they are doing a determination on a ruling by the building department.

Paul S. said that Dave gave a negative determination, and you are making a recommendation one way or the other and then it goes back to the Planning Board.

John said no, he makes a determination, the applicant doesn't agree with his determination, it comes to this board and they decide if the determination made by the building department is correct or incorrect, if it's correct then in this case the applicant would go back to the building department and it would further the process that way, that's only up for two units. This is not to say for the short-term rental, this is just for plural, so they can go back to the building department for one and then can proceed to the Planning Board.

Paul V. said really what the board is doing is that Dave made a legal interpretation, the board is reviewing that legal interpretation and they are either saying that legal interpretation is right or that

legal interpretation is not right or it is modified. They are really not getting into the weeds of the impacts at this point.

Paul S. asked so the board is trying to determine if it is one unit or two units?

Paul V. replied right.

Paul S. said that before the previous owner rented out part, it was all one home, he had a fire because it wasn't a legal structure he wasn't able to fully renovate the damage. What he chose to do was renovate the old part of the building and the addition on the north side. The one on the south side was never occupied after the fire. The whole reason for that was so he could recoup his losses for the home.

Paul V. said in talking with counsel in between, the applicant if the board is willing to have the hearing continued after tonight, so they can gather more information potentially including discussions with Dave.

John said for the grandfather part, so you want to lump it all into one and come back.

Kyle said so the board is just going to adjourn this.

John said that they are not going to close the public hearing, they never do until they are ready to vote because everyone has a opportunity to be heard. With that being said is there anything you want to bring up?

Kyle said the only thing he would ask is to reserve the right to make another written submission to the board.

John replied certainly, the only thing they ask is that they get it a week in advance.

Kyle said that he will make sure that board gets it in plenty of time before the next meeting.

Administrative:

Minutes to approve:

February 9, 2023

John asked for a motion to approve the minutes.

Motion made by Russ, 2nd by Bill.

All ayes, motion passed to approve the minutes.