

**ZONING BOARD OF APPEALS**  
**TOWN OF LLOYD**  
**MINUTES**  
**Thursday, May 11, 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, Jessica Van Houten; Board Staff: Anthony Giangrasso, Paul Van Cott, and Sarah Van Nostrand

**Public Hearings**

**Relyea, Susan: Area Variance: 1 Maple Ave & Brinkerhoff Ave, SBL #88.17-10-3.200 & 88.17-10-4**

Applicant is seeking area variance for proposed lot #2 for rear yard setback, and an area variance for proposed lot #1 for side yard setback.

John asked for a motion to open the public hearing.

Motion made by Paul G., 2<sup>nd</sup> by Shawn.

All ayes, motion passed to open the public hearing.

Paul G. said that there is a stone wall straight up.

John said the lot line follows the contour of the retaining wall.

Board agreed that no more information was needed.

John asked Paul V. if they had to go in front of the Planning Board for a subdivision.

Paul V. said yes.

John said he doesn't think it would be a concern of theirs, but there is no access to lot 1. There is no driveway to lot 1, it comes in through another lot. The access for lot 1 comes though the lands on the corner. He asked if that was a consideration for this board.

Paul V. said no.

\*No public comment\*

Russ said he wants to make it clear for the record that he lives a couple of properties away from this, he is well aware of the design of the plot and that is the only place the property line can go and he has no problem with that.

John asked if it would be a good idea to do a draft resolution or just walk through this.

Paul V. said however you want to do it, he does not have a resolution tonight and the board will want to look at it next month.

John said let's leave the public hearing open, the board will have a draft resolution to approve the variance.

Balancing Test:

1. Undesirable change in neighborhood character or to nearby properties?

John said that there is no change, it is just a line on a map that is being changed and all of the buildings are pre-existing. The offset is already pre-existing.

Board agrees.

2. Whether benefit can be achieved by other means feasible to applicant?

John said that there are alternatives, but none of them are feasible. Alternatives would be to remove the building.

Board agrees.

3. Whether the request for relief is substantial?

John said that he doesn't believe it is, they are a quarter acre zone. The actual offsets are not substantial and for reason previously stated are pre-existing.

Board agrees.

4. Whether the request will have adverse physical or environmental effects?

John said it would have no effect.

5. Whether alleged difficulty is self-created?

John said yes, but it is not a determining factor.

Straw Poll for granting the variances:

Bill-aye  
Russ-aye  
John-aye  
Paul G.-aye  
Shawn-aye

**Walton, Gia: Area Variance: 1 & 25 Picnic Woods Rd, SBL #94.2-2-18.130 & 94.2-2-18.141**

Applicant is seeking an area variance for lot area. Proposed lot #2 is a new buildable flag lot 2.04-acres in size. The flagpole is 0.16-acres in size which may not be counted towards lot density, therefore relief of 0.12-acres is needed.

Paul G. said that they have the setbacks for the agricultural zone.

John said that they are not asking for setbacks, they are only asking for lot density as the flag is not added in here.

John asked for a motion to open the public hearing.  
Motion made by Russ, 2<sup>nd</sup> by Shawn.  
All ayes, motion passed to open the public hearing.

\*No public comments\*

John said that they will leave the public hearing open.

Balancing Test:

1. Undesirable change in neighborhood character or to nearby properties?

John said he doesn't believe it would, they are very close to meeting all the criteria. Flag lots are allowed if they meet certain parameters, this one misses a parameter, but by a very insignificant amount.

Board agrees.

2. Whether benefit can be achieved by other means feasible to applicant?

John said he doesn't believe it could as they have adjusted lot lines to get as close to compliance as they can.

Paul G. said that was what he looked at last meeting.

Russ asked is the flag pole 25-feet wide.

John said 25.58-feet.

3. Whether the request for relief is substantial?

John said no it is a very small amount of relief.

Board agrees.

4. Whether the request will have adverse physical or environmental effects?

John said there are no it would not.

5. Whether alleged difficulty is self-created?

John said yes, but it is not a determining factor.

Board agrees.

Straw Poll for granting the variance:

Bill-aye

Russ-aye

John-aye

Paul G.-aye

Shawn-aye

**Hudson Troy Group LLC: Use Variance: 1 Grand St, SBL #88.69-5-17**

Applicant is seeking a use variance to allow one short-term rental in a 3-family home.

Phillip (Applicant) said that his wife and him purchased a 3-unit apartment building back in 2021. The first year they sustained a loss. The second year they got a new tenant, hardships COVID, they sustained a large loss as they couldn't pay rent, but they were lucky enough that they found opportunity in New York City and were able to move out. They do have two good renters at that point in July of 2022 prior to the ordinance being passed, they started to use Airbnb. At that point on Airbnb they were averaging over 2,000 a month, it really helped them and for that year, they ended in the black and made some money and could invest back in the property. Based on the income coming from Airbnb and future bookings still going on today, they chose to lower the rent for one of their tenants, for their other tenants they kept the rent the same. Losing Airbnb he feels is a fair market rent would not put them where they need to be actually hitting the black and investing back in the property. The cost of running a building from taxes and everything has gone up, but the Airbnb has really helped them out with that. Going forward they are hoping to keep this, so it is somewhat profitable.

John said when you said you started renting with Airbnb in July.

Phillip said July of last year.

John asked if he was registered to rent with the county, did you meet all the criteria.

Phillip said that at the time he was unaware that he needed to be registered, he is now and everything was sent in when he received notification, it is waiting for approval of the variance.

John said you were not registered prior to January.

Phillip said no.

John said that is off the table there is no grandfather clause. Unfortunately, a use variance is a really big ask and the board's hands are tied for a use variance. There are more stringent criteria that the board needs to go by in order to grant a use variance. The applicant would have to show that they would not be able to receive a reasonable return with an approved use, so there are 3 apartments. He understands what he was saying about people not paying rent, the board cannot be concerned with that because when you are a landlord you accept that risk. You would have to prove that you would not be able to rent that apartment in Highland at a fair market value. He said that there is a shortage of affordable housing, so you would have to prove financially that you would be unable to rent that as an apartment as it is an approved apartment which is an acceptable use.

Phillip said that he understands that, but at the same time he is renting at a very reasonable rate to Highland residents and he hopes that can be realized. The Airbnb does help again it is an investment and he wanted to choose to make that, so it was again last year prior to this ordinance. If he knew something was going to come out like this, he probably would have double thought it about that coming out. He made a purchase and all of a sudden he has a restriction on a piece of property that he bought as an investment property. From his point of view it makes it a little bit tough on residents that grew up here to invest in Highland and want to keep the money in Highland. He hopes the board can appreciate that he is doing affordable housing, he has letters from his tenants and brought it up to his tenants and they are appreciative, he is responsive, he is proactive, reactive, he is there when they need something. If they are talking about affordable housing, he is providing it. He feels that the 3-unit stop on using 1-unit as an STR is probably not reasonable, he can understand if he wasn't a local resident and he bought it from the city and rented it out to who ever it may be and made it a slumlord which might want to be prevented, he doesn't want to see that.

John said unfortunately this board cannot rewrite law and it is clear in the town law that it is not an allowed use for a multiple unit.

Phillip said that he went to Dave Plavchak who said this was the avenue to go though while they look at the law. He expected a reasonable hearing not that he cannot do it at all.

John said he is just stating the criteria, he is not saying they are not going to do that. An area variance is an easier ask. A use variance the board is very restricted on a use variance. The board has to have financial documentation to say that you cannot get a reasonable return on your investment.

Phillip asked how is that to be provided.

John said you would have to have an ad in a local paper or some kind of listing with a real estate agent for x amount of time.

Phillip said so if he went and said that he wants on average \$2,700 for his one-bedroom loft apartment.

John said if that is the fair market value.

Phillip said that is above the market value, but that is to compensate for the other 2 units that are under. That is just him making that decision. He understands what the board is saying, but he now has to go another month or two and put an ad in the paper to say that no one is renting out for \$2,700, so here he is in a situation what does he do. He understands what the board is saying, the way he is thinking about it is about what he needs to stay where he is around that amount, so that is what he is doing with his Airbnb. He did print out his operating statements for the last three years to show the board.

John said that is something that they would consider because he would have to show a financial hardship, so the board would consider that. You would have to present to the board a reason why you have something that is acceptable, you want to deviate from that and for a use variance to deviate from that are strict criteria, you have to say that you cannot have a reasonable return on his investment and if it does what it is supposed to do, so he wants to deviate from that and do what is not allowed to be done to meet.

Phillip said he does understand what the board is saying, but if it comes to the decision that he does have to come back and lay down in front of the board, he is just trying to understand the way it needs to be presented to show that. He is trying to understand how it can show other than an ad in a paper or coming back and saying he raised everyone's rent.

John said what the board can do is to discuss with Paul V. offline what an applicant would have to provide for the board to determine. Use variances are very difficult as the board has strict policy they have to abide by.

Paul V. said it is a state law.

John said the financial part is just one of the criteria and is usually the driving force. He asked Paul V. to outline what is needed for a use variance.

Paul V. said that the first one is that the applicant cannot realize a reasonable return provided that lack of return is substantial as demonstrated by competent financial evidence. The second standard is the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood. He would be looking at the R-1/4 district, but also the properties surrounding this one and what are the other uses.

Phillip said would anything really change in that case for a use variance.

Paul V. said it is another factor that you have to show that your situation is unique.

John said that no one else in your area or zone has the same problem are there other multiple units.

Phillip said that he has no idea.

John said that is something that you would have to provide the board.

Phillip said he knows two, but three he is not sure of. He would have to go around and somehow figure it out through Airbnb.

Paul V. said if you look at the tax map and went on Ulster County Parcel Viewer website, they have property codes that tell what the use is, you can find out that way. If it is more than one dwelling unit, it will say that it is a multi-family.

Paul G. said there is one across the street.

Phillip said he doesn't know if they are using it as an STR.

John said that is not what you need to do, not STR. What you are going to say is you are unique, so if the neighbor can rent his the way he is allowed to, why should you be afforded the opportunity to rent yours the way you are not allowed to. He thinks a 500-foot radius is a little small.

Russ mentioned that there are quite a few multi-family buildings near this property.

John asked does the board want to say 500 is adequate. He doesn't think the board should say 500-feet because they will use this as a template, so if someone else comes in a R-1/4, right now they are using this project to set up a template, he thinks it should be larger, he thinks it should be a 1,000-foot radius. You don't have to go through all of them, you just have to take a sample of that for similar multi-rentals and bring that to the table.

Phillip asked as this template is being created is he going to get something that tells him exactly what is needed. He said after he gets a sample then he would have to guess their rent or get a hold of the owners and wants to know how much time that would take.

John said that you are trying to show why you are different from those other parcels.

Phillip said that he has been renting since July of last year and that the board said he is not grandfathered in, but he is unaware of when the law came out, but he was operation as a STR prior to this becoming law in the Town of Lloyd. Using this as an STR made him money for 6-months and now he feels that it being taken away by the town. He mentioned that he is starting to feel overwhelmed by the entire process.

John said you originally purchased that piece of property, you stated that you had 3 apartments.

Phillip said yes.

John said and for a time, those 3 apartments were rented as apartments. When you purchased the property, you were intending to rent apartments.

Phillip replied no. He said there used to be a semi-pro baseball player here, he had just gotten let go

from the minor league and needed a place to stay. His intention when he bought the property was to only have 2 rentals and one Airbnb, he wanted that from day 1, but instead he let the baseball player stay there and put off what he wanted to do. It was always his intention to rent 2 out stable and then try his waters with in the Airbnb market.

John with the radius you don't have to do all of them, you just have to give the board a sample of that.

Phillip asked what is the criteria of the sample that he has to come up with.

John said multi-family.

Phillip said multi-family and what they are averaging with rent. He can look, but he wants to know what the board wants him to take away from that and present to the board.

John said what makes you unique to them.

Phillip said why are they not using STR and why does he need it, if they don't need it.

Paul V. said if he was in a neighborhood that was mostly single-family dwellings, then his situation would unique. If he is in a neighborhood where most of the properties are multi-family, then your situation is not unique because they would be in the same boat he is.

Phillip said that his homework is why is the surrounding multi-family homes ok without this.

John said no, this isn't financial.

Paul V. said this is separate from that. Everyone in that district is affected by this zoning law. The zoning law says if you have a multi-family dwelling you cannot have an STR in it. If you go 750-feet and most of the properties in that area are single-family dwellings.

John said then you are unique.

Paul G. said the third apartment, he says he needs \$2,700 a month to meet the quota. He wants to know what his return would be if he rented all 3 at market value.

Phillip said that he understands. He feels that the financial hardship is now the town because now he has to prove the way he wants to use this property.

Paul V. said the board's job is to apply the law. They do have discretion on how they interpret the law, but they have to do it based on these standards. For the financial he needs a certain amount of money for the taxes, maintenance and to obtain a reasonable return. Then it is not that hard of a prove question, you need that much money how are you going to get it. You have your own personal goals of how you are going to use your property in terms of the other 2 apartments and how much you want to charge, so how much do you need to offset that and meet your goals. It is just showing that to the board.

John said what Paul V. is saying is you have to prove that you don't have to follow the rules that



everybody else does, why you cannot be sustainable financially with the rules that are in place. As far as what you were saying about the town, this board cannot change the law, but what you can do is you can petition the Town Board and ask them why they did this. They are reasonable and may change the law.

Phillip asked if he would be sent an outline for the financial criteria.

John said he will give him some guidance. He doesn't know if he would call it an outline, but they will give him some guidance. The last criteria is, is the requested use variance if granted will not alter the essential character of the neighborhood.

Paul V. said that the board can look at that however it likes, it is essentially a swap residential use, you are renting it out as a STR vs renting it out as an apartment.

John said the last one is, is it self-created.

Phillip said that he feels it is created by the Town of Lloyd.

John asked for a motion to open the public hearing.

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

All ayes, motion passed to open the public hearing.

\*No public comments\*

John said that they will leave the public hearing open. They will be in contact early next week with some more information for the financial hardship, what you can point to or that the board can evaluate as being a financial hardship. To be honest, it is very hard to get a use variance.

**Administrative:**

**Minutes to approve:**

April 13, 2023

John asked for a motion to approve the minutes.

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

3-ayes, 2-recusals (John and Shawn)