

**Town of Horicon
Zoning Board of Appeals**

**December 20, 2016
Minutes**

Present at Meeting:

Thad Smith, Chairperson
Cheryl Erickson
Gary Frenz
Pat Farrell
Scott Olson, Alternate #1
James Dewar Alternate # 2

Also Present: Town Attorney Justin Grassi, Zoning Administrator Jim Steen, Town Board member Bob Olson, Steven M. Byrne, Gerald P. Byrne

Agenda Items: **File # 2016-01 Tax Map # 55.17-1-21 Appeal Interpretation of Zoning Administrator Decision**
 File # 2016-07 AV Tax Map # 36.3-3-1 Side Yard setback

Pledge

Chairperson Thad Smith announced that in the absence of Charles Lewis, Scott Olson Alternate # 1, would be seated as voting member tonight.

Chairperson Thad Smith called the meeting to order at 7:00 p.m.

Review of Minutes: Scott Olson made a motion to approve the October 25, 2016 minutes as written. Second by Gary Frenz. **ALL AYES.** Vice-Chairperson Cheryl Erickson made a motion to approve the November 15, 2016 as written. Second by Pat Farrell. **ALL AYES.**

PUBLIC HEARING: **File # 2016-01 Appeal Interpretation of Zoning Administrator Decision**
 Alice Altieri/Probst Family Trust
 Tax Map # 55.17-1-21
 514 Palisades Road
 Brant Lake, NY 12815

An application has been made by the Probst Family Trust/Alice Altieri seeking to have the Town Zoning Board of Appeals issue a determination finding that the property located at 514 Palisades Road, Brant Lake, NY 12815 be considered a pre-existing, non-conforming ("grandfathered") lot under the Town Zoning Law.

Chairperson Thad Smith asked if there was anyone here to speak on this item. The Altieri/Probst family were not in attendance. A neighbor Gerald Byrne was there to speak against the property being considered a pre-existing, non-conforming (grandfathered) parcel.

Gerald Byrne gave a little history on the previous requests to have variances approved in order to build on this parcel. In both instances the Zoning Board denied the variances. Gerald Byrne referenced the August 15, 2011 letter to Ms. Altieri from Gary McMeekin, Zoning Administrator at that time that indicates his finding that this is not a pre-existing parcel in a pre-existing subdivision, but a beach lot only and intended to be left as a beach lot specifically. This determination was made before the Zoning Amendment of Section 14.10 dated 2005. He does not disagree with the past Zoning Administrator's decision. The applicants are requesting that this be considered a pre-existing non-conforming parcel. He then referenced a letter from Warren County to Ms. Altieri dated July 6, 2011 and it states exactly when this property came into existence. Two subdivisions were put together by Hobart Rosen, owner of the girls' camp, the first subdivision in 1971 and the second in 1973 and at that time they left off a little piece of property, this parcel of property is approximately a ¼ acre parcel. That is how this parcel came to be. This was never defined as a lot at all. Gerald Byrne just recently learned that it was not even taxed until 1983. The applicants Altieri/Probst request the "Grandfathering" of this lot. Gerald Byrne has no objection to have rights to continued use of property to be used as a beach parcel with a garage. The parcel was created

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on July 23, 1973 and therefore not pre-existing and is hereby defined as a garage beach parcel. They cannot have bathroom or kitchen facilities in this garage. Gerald Byrne notes from personal observation, when he purchased his property in 1978, Hobart Rosen was using the beach access parcel for day use for the campers of his girls' camp. In 1983 the parcel was purchased by Ms. Altieri. Gerald Byrne has no objection to continuing use as a grandfathered parcel for day use activity and continuing garage access as used today. Gerald Byrne referenced his letter from December 18, 2016 stating that the parcel in question was created on July 23, 1973 when two (2) subdivisions were created. He noted that on neither subdivision plan was this parcel of property ever submitted, recognized or approved as a standalone lot, or as a lot with a defined use within a subdivision.

Town Attorney, Justin Grassi gave some clarification to the board on this issue. Usually the ZBA is tasked with interpretation of the Zoning code where there might be a gray area. The ZBA interprets the Zoning Officers decision. This is pursuant to Zoning Ordinance. In this instance it is ordered by the court to interpret the Planning Board determination that the lot was not of record before and therefore not grandfathered. Now the job of the ZBA is to overturn or uphold the Planning Board 2004 decision. This is an order from the court to interpret the Planning Board determination that the lot was not of record prior to 1977 and is therefore not "Grandfathered".

Scott Olson stated that the previous determination of the Planning Board was that this parcel does not exist. Gary Frenz gave a history of the subdivisions and this lot was not included in the previous subdivisions.

The Planning Board relied on the rules of "Grandfathering" that at that time stated any lot not on record as of 1977 was not "Grandfathered".

Gary Frenz stated that the parcel was used by the girls' and boys' camps. Pat Farrell asked if it is in the deeds. Gary Frenz stated it was not in their deeds.

Town Attorney Justin Grassi stated that the decision is more difficult because the application materials don't give information that the board is seeking.

Scott Olson suggests that because they bought in 1983 the Zoning Regulations at that time would have prevented it from becoming a lot.

If the board was to determine it was a pre-existing non-conforming lot then it could be "grandfathered" and buildable at this time.

It was not pre-existing non-conforming at the time.

If deemed pre-existing it would still have to come for Zoning Variances.

Jim Steen, Zoning Administrator spoke stating that if this is a "Grandfathered" lot it gives the applicant the advantage of having an undersized lot but would still need variances for meeting setbacks. Typically when subdivisions are submitted you are required to show a home, septic and well location on the plot plan and this was not done for this parcel during the subdivision process.

Gary Frenz stated that the previous Zoning Administrator and he researched this extensively at the time of the requested variances. Hobart Rosen sold it in 1983 to Altieri/Probst. When he sold the camp the new owners of the camp did not want the property and Hobart Rosen then sold it to Altieri/Probst.

Jim Dewar asked if there was a survey and Gary Frenz stated that it was never on the survey for either subdivision for this parcel to form a building lot.

This lot was never intended with the original subdivisions to be a buildable lot. It is less than ¼ acre and very narrow piece of property.

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Town Attorney Justin Grassi stated that the Board is tasked with looking at the determination of the Planning Board and to uphold or overturn that decision.

Gary Frenz stated that this application came before the Zoning Board twice and was turned down for requested variances after 1983 for building anything on this parcel as it could not meet the setbacks.

Town Attorney, Justin Grassi explained to the Board members that "Grandfathered" means it has permitted uses. There can be a pre-existing structure on the parcel; however, there still is a question as to whether the rest of the parcel is buildable.

Thad Smith suggested they postpone any resolution on this file and revisit at the next ZBA meeting on January 24, 2016 giving the Board more time to look over the request. He suggested that the Board have the Town Attorney prepare resolutions for the Board to make their determination after looking over the file more closely in order to make a more informed decision.

Being no further discussion or comments and based on the above discussion by the Board Gary Frenz made a motion to close the Public Hearing. Second by Scott Olson. **ALL AYES.**

Gary Frenz made a motion to have Town Counsel draw up resolutions to be discussed further at the next ZBA meeting on January 24, 2017. Second by Pat Farrell. **ALL AYES.**

NEW BUSINESS:

**File # 2016-07 AV
Tax Map # 36.3-3-1
Ed Hughes
250 East Shore Drive
Adirondack, NY**

Area Variance for Side Yard setback from Zoning Code section 6.10 to add a 10' x 19' 6" screen porch to sit 9' 8" from the side yard where 15' is required.

Chairperson Thad Smith asked if there was anyone present to speak on this project.

Zoning Administrator Jim Steen stated that the person that has the Authority to Act as Agent for this proposed project was not here tonight. Jim Steen, Zoning Administrator stated that it would be up to the Board to decide if they wanted to move forward and the Board indicated yes, they would move forward on this application. Jim Steen, Zoning Administrator went on to state he would give the Board a quick overview of the project.

This is a simple sideline setback request. They are putting a screen porch on current structure. It will come in 18" on both sides from the existing structure. There will be an entrance through French doors on the inside to the porch. There are no staircases coming off of the porch. The owner of the property next door owns this cottage as well along with other family members. The survey shows the structure which is 9.8' on a slight angle. There will be no further encroachment on the side than already existing.

Scott Olson asked if they have everything needed for the application and Zoning Administrator Jim Steen responded yes all the necessary paperwork is on file.

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Being no further comments or questions, Pat Farrell made a motion to deem the application complete and schedule a Public Hearing for January 24, 2017. Second by Scott Olson. **ALL AYES.**

Chairperson Thad Smith asked if there were any more comments.

BOARD COMMENTS: None

PUBLIC COMMENTS: Bob Olson, Town Board member spoke and he stated that very few residents of the Town realize what the Boards do. The Boards regulate hundreds of thousands of dollars for the Town and he thanked the Zoning Board on behalf of the Town Board for their service.

Being no further comments Scott Olson made a motion to adjourn the meeting. Second by Pat Farrell. **ALL AYES.**

MEETING ADJOURNED: 7:40 pm

NEXT MEETING: January 24, 2017