

**Town of Horicon
Zoning Board of Appeals**

**January 24, 2017
Minutes**

Present at Meeting:

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

Also Present: Town Attorney Leah Everhart, Zoning Administrator Jim Steen, Town Board member Bob Olson, Planning Board member Teri Schuerlein,

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

Pledge

Chairperson Thad Smith announced that in the absence of Gary Frenz, Scott Olson Alternate # 1, would be seated as voting member tonight and in the absence of Charles Lewis James Dewar Alternate # 2 would be seated as a voting member.

Chairperson Thad Smith called the meeting to order at 7:05 p.m.

Review of Minutes: Vice-Chairperson Cheryl Erickson made a motion to approve the December 20, 2016 minutes as written. Second by Pat Farrell. **ALL AYES.**

PUBLIC HEARING: **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 opened the Public Hearing File # 2016-07 AV, Tax Map # 36.3-3-1 for a Side Yard setback from Zoning Code 6.10 to add a 10' x 19' 6" screen porch to sit 9' 8" from the Side Yard where 15' is required.

The contractor who has the Authority to Act as Agent for this proposed project is not able to be here tonight due to a medical issue so Zoning Administrator Jim Steen gave the Board the overview of the project. A little 10' x 19' 6" screened porch will be added to the current structure that sits 9' 8" from the property side yard line which will be no closer dwelling itself currently sits. The porch will be screened in the front and will have French doors that open on to the porch from the inside. The screened porch will be moved in 18" on both sides and there will be no further encroachment on the side yard setback than already existing. It will have the same siding as the current structure and is not subject to APA review due to the new Zoning Regulations.

Vice-Chairperson Cheryl Erickson asked if it is a screened in porch as opposed to the wooden deck on the other side. Zoning Administrator Jim Steen stated yes it is a screened porch and there is a wooden deck on the other side.

**Town of Horicon
Zoning Board of Appeals**

**January 24, 2017
Minutes**

Scott Olson asked if anyone recommends any conditions and if having been on the site are there any concerns. The Board members stated no, there will be no conditions set and Zoning Administrator Jim Steen stated there are no concerns on the site.

Vice-Chairperson Cheryl Erickson asked if they will be taking down any trees and Zoning Administrator Jim Steen responded no trees will be taken down during this project.

Town Attorney Leah Everhart asked Zoning Administrator Jim Steen what it meant on the application that both houses are owned by the same person.

Zoning Administrator Jim Steen responded that the survey that was submitted was done for the home that Ed Hughes owns outright that is next door to this cottage and this cottage is owned by Ed Hughes and other family members.

Scott Olson stated that he is then his own adjoining owner.

Vice-Chairperson Cheryl Erickson asked if there were any other wooden decks or porches on the other home and Zoning Administrator Jim Steen stated yes there is a porch and a deck on that house as well.

Vice-Chairperson Cheryl Erickson stated then it is in keeping with the neighborhood.

Chairperson Thad Smith stated that the Warren County Review came back and there is no county impact associated with this proposed project.

Being no further questions or comments Scott Olson made a motion to close the Public Hearing. Second by James Dewar. **ALL AYES.**

Scott Olson made a motion declaring this a SEQRA Type II action and is not subject to further review. Second by Pat Farrell. **ALL AYES.**

The Board reviewed the Area Variance criteria for the Balancing Test:

The ZBA further finds that variances from **Section 6.10** Area Variance for Side Yard setback of the Town of Horicon Zoning Code regulations is the minimum variance that should be granted in order to preserve and protect the character of the neighborhood and the health, safety and welfare of the community because:

- 1) The benefits sought by applicant could not be achieved by any other means feasible because of where the cottage currently sits. The lot is in keeping with the lots in the area.
- (2) There will be no undesirable change to the character of the neighborhood or detriment to nearby properties: It is in keeping with the character of the neighborhood and other houses are similarly situated.
- (3) The requested variance is substantial on paper; however, the dwelling itself is already non-conforming at 9' 8" then the porch does not make it any more substantial than what the house is already.
- 4) There are no adverse physical or environmental effects as it is conforming to all other properties around.
- 5) The alleged difficulty is not self-created.

**Town of Horicon
Zoning Board of Appeals**

**January 24, 2017
Minutes**

6) This is the minimum variance necessary because it is a relatively small porch which he reduced the size of so as not to encroach on the side yard setbacks.

Vice-Chairperson Cheryl Erickson made a motion to approve the Area Variance request 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. Second by Scott Olson. **ALL AYES.**

UNFINISHED BUSINESS: **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.

Town Attorney Leah Everhart stated that the Board reviewed two proposed resolutions for this application. She suggested that the Board discuss the application and after discussion make a motion, then read the resolution out loud which then will become the Board's decision after a vote has been taken.

Scott Olson began the discussion by stating it is his understanding that subdivisions happened on either side of this piece of property and the owner of one of these subdivisions neglected to include that small piece of property with a building on it in the subdivision.

Town Attorney Leah Everhart stated that no one knows for sure whether exclusion of the property at issue from the subdivisions was purposeful or neglectful, but otherwise those are the facts as we know them.

Vice-Chairperson Cheryl Erickson stated that subdivisions were done in early 70's prior to 1977 and approved by a Planning Board and became properties of record at that time. Scott Olson's question was, is it the Planning Board's responsibility not create this property in the 1970's?

Town Attorney Leah Everhart explained that the Planning Board does not decide what land is included in any proposed subdivision. She explained that Applicants get to decide what they want to propose to the Board. Town Attorney Leah Everhart stated that whether the owner includes all the lands owned or not is up to the owner. The way the Planning Board was involved in this process was more recent and not related to any subdivision. The Planning Board was asked by this board to review the facts and to make a determination as to whether the land at issue is "lot on record". In 2004, our Code stated the Planning Board determined whether a lot was pre-existing. When it came up in context of the variance application it was sent to the Planning Board and Planning Board rendered a determination.

Chairperson Thad Smith stated that when property is left over after a survey, it's called a gore and there was discussion as to whether this property falls into the definition of "gore".

**Town of Horicon
Zoning Board of Appeals**

**January 24, 2017
Minutes**

Scott Olson stated that obviously these two subdivisions were created and this parcel with a building on it is in the middle of the subdivisions.

Town Attorney Leah Everhart reminded the Board that the original intention of the lot owner was not clear in the record.

Scott Olson stated that either by omission, neglect or trying to pull a fast one no matter how it happened this lot was created and then sold.

Vice-Chairperson Cheryl Erickson asked if when the Altieri's purchased this lot, it was mentioned that it was a building lot.

Chairperson Thad Smith said no, that he believes that the original lot owner intended this parcel to be only an access lot and not a building lot.

Vice-Chairperson Cheryl Erickson asked whether the current garage structure was on the parcel in the 1970's. She also asked whether the presence of a garage could have led a purchaser to believe that the property was a building lot.

Chairman Thad Smith stated that it was never put on tax maps.

Vice-Chairperson Cheryl Erickson asked then how did they buy it? Was there any record available when the Altieri's bought the lot?

Town Attorney Leah Everhart stated that the applicant was provided two different dates by the court to submit additional materials for review and neglected to submit anything by those dates except for what was submitted in 2011. So we do not know what the applicant's expectations were.

Scott Olson stated it's not relevant.

Town Attorney Leah Everhart reminded the Board that when the Board interprets zoning codes the goal is to effectuate the Town Boards intention. She said the question that the Board should try to answer is what was intended by the Town Board when creating the provision in our Zoning Law? When interpreting the provision the Board should first look to the plain language used in the law. If the plain language gives you an impression of the intention then that's the end of the story. If the plain meaning of the provision itself is not clear, then there are other things the Board can consider. However, the first step is to look to the provision and try to determine what its meaning is.

There was some discussion about what other materials may be in existence that could help this Board in its review.

Town Attorney Leah Everhart stated that it's not the job of legal counsel or the Zoning Administrator to supplement any application. Applicants seek a Board's review and it is the Applicant's job to provide the materials that are necessary and helpful to the Board.

Scott Olson asked did these folks supply all of the necessary documents to the Planning Board in 2004.

Town Attorney Leah Everhart stated that the Planning Board was supplied with materials in 2004 that were not provided to this Board. However, the Applicant was given additional opportunity by the Court to submit any materials the Applicant wished to submit.

**Town of Horicon
Zoning Board of Appeals**

**January 24, 2017
Minutes**

Vice-Chairperson Cheryl Erickson said, so we are appealing the fact the Planning Board determined this is not a "lot on record". So is it a property of record with what the Zoning Board is provided as it was not a property of record at the time it was reviewed in 2004. The Board now is interpreting what the Planning Board meant at the time in 2004.

Town Attorney Leah Everhart stated that the phrase "lot on record" is in the relevant provision of our Zoning Law. It is the same provision reviewed by the Planning Board in 2004.

Town Attorney Leah Everhart stated that the ZBA is being directed by the Court to consider whether to overturn the Planning Board's 2004 determination. Therefore, this Board needs to decide whether the property constituted a "lot on record" as of December 29, 1977. In order to do that the ZBA has to make their own decision of what "on record" means.

Scott Olson asked if it is like an NFL review when it has to have evidence that referee was wrong in order to make a determination? Town Attorney Leah Everhart recommended that this Board not provide the Planning Board any deference in this particular review.

Scott Olson stated so we are not looking for a violation of a statute just a flat out interpretation as we see it. It had a building on it. Those are the facts.

Chairperson Thad Smith stated that it was not a "lot on record" between 1971 and 1977 and a deed was not recorded on this lot until 1983.

Town Attorney Leah Everhart suggested to the ZBA members that the first step might be to consider if there is any relevance to the word "on record" in the statute. What does "lot on record" mean?

Vice-Chair Cheryl Erickson stated that if it is a "lot on record" prior to Zoning Law or adoption of current Zoning Law they would not have to comply with any lot area or width requirements. Town Attorney Leah Everhart explained that if deemed to be a pre-existing non-conforming "lot on record" then there are two dimensional requirements in our Zoning Code that would not apply. However, there would be other zoning limitations placed on properties which would have to be complied with under our code or, in the alternative, variances would have to be obtained.

Scott Olson asked are we questioning whether this a lot or whether it is a building lot or a pre-existing lot?

Town Attorney Leah Everhart stated that the provision in our Zoning Code for pre-existing lots is the same provision that includes the phrase "lot on record" that we've been talking about. Therefore, if this Board decides that this was a lot "on record" at the relevant time, it would be a pre-existing lot under our zoning law. If this Board decides that it was not a lot "on record" at that time, then the property would not be a pre-existing lot. She said that very issue is what the Board is deciding.

Vice-Chair Cheryl Erickson stated so if it's not a "lot on record", which could be true, then the fact that there is a building on it does not mean it's a building lot.

Town Attorney Leah Everhart asked Zoning Administrator Jim Steen if in the Town of Horicon you can have a garage on a lot that you can't build a house on. Zoning Administrator Jim Steen stated that he knows of no provision that prevents garages on substandard lots where houses are not allowed by law.

Vice-Chairperson Cheryl Erickson asked whether the building itself on this lot give more credence that it is a building lot because it has a building on it and not necessarily a defined "lot on record"?

**Town of Horicon
Zoning Board of Appeals**

**January 24, 2017
Minutes**

Zoning Administrator Jim Steen stated that he is not sure whether there were minimum lot sizes in effect when the subdivisions on either side were approved.

Town Attorney Leah Everhart explained that when a zoning law comes into effect, Towns will typically decide how to deal with properties that are too small. The Town Board gets to decide which properties are "grandfathered". Here, the Town decided that any property that was a "lot on record" on December 29, 1977 would be considered "grandfathered".

So the ZBA has to decide whether that definition includes the property we have here and if it does then the minimum lot size and width does not apply. Setbacks apply.

Town Attorney Leah Everhart stated if it is not a "lot on record" the outcome is that the property owner would have to obtain variance from this Board for minimum lot size and width requirements in addition to any other necessary variance in order to construct a home.

Scott Olson stated so this lot was sold considerably after 1977, in 1983 by the person who did the subdivisions so he feels it is not a "lot on record" because the owner could have included this lot in the subdivisions and he chose not to. He could have kept it but he did not.

Vice-Chairperson Cheryl Erickson stated so to make it a "lot on record" they have to comply with the all of the zoning conditions that exist now on a lot that size. Nothing is "grandfathered" anymore.

Town Attorney Leah Everhart explained that the issue of this lot being grandfathered is a snapshot in time. If it was a lot on record on December 29, 1977 it is a grandfathered lot.

Vice-Chairperson Cheryl Erickson then asked so where does this go then?

Scott Olson stated hold on a second. So I have a piece of property in 1977 and I subdivide a large chunk of it and I save 50 acres for myself, that 50 acre lot remaining is not included in the subdivision is still a "lot on record"?

Chairman Thad Smith stated they would have to show on subdivision map and this one did not show on the map. You would have to have that someplace on the map and declare it a lot for you to keep. You would have to say this is my lot I'm not selling it. You can't keep a piece of property hanging there with no definition to it and have it be "on record".

Scott Olson stated that he believed the lot was created prior to 1977.

Chairperson Thad Smith stated that he believed that it may have been created, but it was not a "lot on record" until after December of 1977.

Vice-Chairperson Cheryl Erickson asked who paid taxes for that lot. Nobody?

Town Attorney Leah Everhart stated it is not clear from record if there were taxes paid.

Scott Olson asked is it incumbent upon the owner to make sure it is a "lot on record"?

**Town of Horicon
Zoning Board of Appeals**

**January 24, 2017
Minutes**

Discussion ensued between Vice-Chairperson Cheryl Erickson, Scott Olson and Chairperson Thad Smith (inaudible)

Scott Olson stated the error was made by the Planning Board when they did not consider this when they approved the subdivision. He does not feel it's the owner's responsibility.

Vice-Chairperson Cheryl Erickson stated that it is no fault of the Altieri's.

Zoning Administrator Jim Steen stated that the Planning Board did nothing wrong during its subdivision review because until there was a zoning code requiring that lots be of a certain size, there was nothing inappropriate about creating smaller lots.

Scott Olson stated the fact that it is not "on record" is not the owner's responsibility is it?

Pat Farrell asked where the deed for that lot actually came from.

Scott Olson stated when he sold it the lawyer probably created it.

Vice-Chairperson Cheryl Erickson stated that the Subdivision deeds were extracted from a larger lot

Chairperson Thad Smith stated that it was a piece of property in 1977, but that it was not a lot on record until the 1983 deed.

Vice-Chairperson Cheryl Erickson agrees with Scott Olson that the lot was created by subtraction prior to 1977.

James Dewar stated looking at the paperwork submitted back in 2004 it seems that the Planning Board seemed to go into Conditional Use. It seems that Mr. Hobart Rosen used that piece of property for business purposes for the girl's camp so it was a commercial use. He thinks the Planning Board in 2004 was trying to say that the condition was changed and it became a piece of residential property and whatever rules applied in 1983.

Vice-Chairperson Cheryl Erickson asked was it a use variance back then in 2004.

Town Attorney Leah Everhart explained that in 2004, the prospective purchasers wanted variances for construction of a home and in the context of a ZBA review effort the question as to whether this is even a buildable lot came up. Because the Planning Board was the Board that made these decisions at the time, this Board referred the application to the Planning Board to identify whether it was a "lot on record" under the Town of Horicon Zoning Code. The Zoning Code remains the same today. The Planning Board then was looking at the same verbiage as the ZBA is today. It's come full circle back to the ZBA by court order. The real issue is looking at the Zoning Code what does "lot on record" require in order for the property owner to have the right to declare that this property is "grandfathered". Does "lot on record" mean that it requires the land existed in 1977 or does "lot on record" mean it existed in its current configuration in 1977 or does "lot on record mean that there was some recorded evidence with the size and dimensions of the current lot on record somewhere in our offices or the County's offices?

Chairperson Thad Smith stated all of those three options

Scott Olson is just trying to understand whose responsibility it was to assign it or not assign it as a "lot of record" at the time.

Town Attorney Leah Everhart advised the Board to stay clear of assigning fault as it has no bearing on interpretation of the code.

**Town of Horicon
Zoning Board of Appeals**

**January 24, 2017
Minutes**

Chairperson Thad Smith asked what the setbacks are in order to be able to be declared a lot.

Zoning Administrator Jim Steen stated that it has already been before the ZBA twice and denied twice for road setbacks, side setbacks and waterfront setbacks. There were licensed engineer drawings submitted for septic plans for where the tank was going to be on this property and the leach fields were going to be on another piece of property however; the line to get from the tank to the leach fields required go through the wetlands and APA review was necessary, but it never got that far because the request for the variance got denied.

Vice-Chairperson Cheryl Erickson stated that the questions for me is if that owner had that big property and created a subdivision on the left and subdivision on the right and he just kept that for his own is it still a "lot on record" because it was originally part of the bigger parcel. Did he pay taxes on that? Did the board just totally miss that parcel and he got out of paying taxes on it? It has to be a "lot on record" to someone however it was not formalized when they created the subdivision and they did not recreate that lot.

Scott Olson stated that prior to the subdivision, that larger lot was a "lot on record" and so after chopping it up; isn't it still a "lot on record"?

Chairperson Thad Smith stated that in 1977 if someone went to search the County Clerk's Office for this property, it would not show up as it currently exists.

Vice-Chairperson Cheryl Erickson asked whether it was fair to say it's not a "lot on record" because it was part of an existing lot and then by omission nobody complained and he still had that lot that with waterfront rights and was using it. It worked out in favor for a long time. She questioned why it would not be a "lot on record" until its sale.

Pat Farrell asked where the deed came from in 1983.

Chairperson Thad Smith stated then it was not a lot until 1983.

Jim Steen Zoning Administrator stated that a deed was created in 1983.

Pat Farrell read in the paperwork submitted that that Hobart Rosen Realty subdivision created both subdivisions. Same person created both subdivisions.

Vice Chairperson Cheryl Erickson stated if it is the same person that sold it then they owned that middle parcel between the subdivisions.

The Board decided that it does not really matter who sold the subdivisions. The same situation occurs because he still had that small parcel.

Vice-Chairperson Cheryl Erickson stated that he did not file that piece of land for some reason and discussed whether this has any impact on the land being a "lot on record".

**Town of Horicon
Zoning Board of Appeals**

**January 24, 2017
Minutes**

Town Attorney Leah Everhart asked what the other board members think.

James Dewar stated that what prompted us to come here tonight was the letter from Warren County that looked at the records and the County seemed to think that it was a "lot on record" in 1977 although he thinks that the County made an assumption, thus prompting Alice Altieri to come to the ZBA.

Town Attorney Leah Everhart stated that it is not appropriate for the Board's legal counsel to direct the Board how to decide any application. She then explained how land transfers occurred before most communities had land use regulations. She explained that there is no issue here about whether the land at issue physically existed in 1977. The issue is whether the land was a "lot on record" as of December 29, 1977. She suggested that the Board consider and decide what "lot on record" means, what the Town Board intended by this provision. She suggested that the Board not focus on tax bills or on whose obligation it would have been to make sure the lot was "on record". She suggested the Board focus on what the words used in the zoning provision mean.

Scott Olson suggested that if a lot is "on record", then perhaps any smaller portions of that lot are also "on record" without any requirement that the smaller pieces be separately identified in any map or deed.

Chairman Thad Smith stated if you went to the County in 1972 and you wanted to know the description of this lot, this is where it sits you would get nothing because there was no record. You would have to do the math. You would not get a legal record from the County. In 1983 it was surveyed and became a "lot on record".

Vice-Chairperson Cheryl Erickson stated that if you subdivide a lot and do it by subtraction and think you are done you would not leave a parcel with a garage on it. Because he did not create a "lot on record" it was still his lot in 1977.

The Board further discussed the difference between the land being in existence and the lot being considered "on record".

Scotts question is still whether being previously included in a larger lot which is on record means that all portions later subdivided are also "on record".

Pat Farrell stated that he looks at it as he (Hobart Rosen) subdivided out of one big parcel and the left over original lot went with one of the subdivisions and the county never picked up this lot that was left over or he left it purposefully for the girls' camp as day use and was put on the girls' camp tax rolls but it never went with the girls' camp and got forgotten.

Town Attorney Leah Everhart stated that the tax history is not in our record. Forgetting about the tax history do you feel it is a "lot on record"?

Pat Farrell responded he does not think it is a "lot on record" because the original identification of that piece of property was lost in the subdivisions.

James Dewar stated he has the same idea that tax maps are generally wrong until a survey is done and recorded and he believes that this piece was just a left over piece from the subdivisions and was probably larger in acreage than expected and just never got recorded. Not "on record" because it was an assumption that was it was "grandfathered" but it was not "on record" for a period of time until 1983 when it was sold it became re-recorded.

**Town of Horicon
Zoning Board of Appeals**

**January 24, 2017
Minutes**

Town Attorney Leah Everhart stated this is a SEQRA type II action and exempt from SEQRA review.

Vice-Chairperson Cheryl Erickson made a motion that this a SEQRA type II action and requires no further SEQRA review. Second by Scott Olson. **ALL AYES.**

Vice-Chairperson Cheryl Erickson stated that she wishes there was more information and being the applicant did not send additional information on the dates the judge set then she feels we are being asked to assume too much.

Town Attorney Leah Everhart stated it's the applicant that forms the review effort and here we are limited with the documents before the Board. She reminded the Board that not appropriate for the Board or Town Staff to supplement the record now, the Public Hearing is closed and the applicant is not the one submitting the document.

Chairperson Thad Smith stated the Board is to determine whether this is a "lot on record" or not a "lot on record".

Vice-Chairperson Cheryl Erickson stated that although she did originally think this was a "lot on record", given what we have in front of us we don't have enough information to say it was a "lot on record" of the information regarding the interpretation of the prior Zoning Administrator. After an extensive discussion, what we do have is the fact there was no lot specifically prior to 1977 that defines this exact little piece of land so she would say now it is not a "lot on record".

Town Attorney Leah Everhart asked the Board if there is any provision of the draft Resolution that the Board wishes to change.

Scott Olson stated that he would like to adopt the resolution as is.

Scott Olson made a motion to adopt the resolution denying the application File # 2016-01 Appeal Interpretation of Zoning Administrator's Decision as written in the form presented. Second by Pat Farrell. **ALL AYES.**

**TOWN OF HORICON ZONING BOARD OF APPEALS
RESOLUTION DENYING APPLICATION 2016-01 APPEAL/DETERMINATION**

WHEREAS, the Probst Family Trust seeks a determination as to whether property it owns at 514 Palisades Road is considered a pre-existing lot pursuant to Horicon Zoning Law Section 13.10 A;

WHEREAS, this provision (formerly at Section 14.10) states "Any lot on record as of December 29, 1977 which does not meet the minimum lot area and/or lot width requirement of this Local Law for the zoning district in which such lot is situated shall be considered as complying with such minimum lot requirements, and no variance from those standards shall be required";

WHEREAS, 514 Palisades Road is located directly between subdivisions now known as the Pine Shores Subdivision and Adirondack Acres Subdivision;

**Town of Horicon
Zoning Board of Appeals**

**January 24, 2017
Minutes**

WHEREAS, in 2004, the Planning Board was the Board authorized to determine whether lots were pre-existing under the above definition and on June 16, 2004, that Board determined that the lot's exclusion from both Subdivisions meant that the lot was not "on record" as of December 29, 1977;

WHEREAS, no legal challenges were made to this determination;

WHEREAS, Warren County Supreme Court issued a Decision on September 27, 2016 directing this Board to consider whether to overturn the 2004 determination made by the Planning Board;

WHEREAS, Supreme Court set a submission deadline for the Applicant and, after that deadline passed without any further submissions, Town Legal Counsel asked the Court to provide the Applicant with more time to make any desired submissions;

WHEREAS, Supreme Court granted that request, but the Applicant made no further submissions prior that Court-imposed deadline;

WHEREAS, the record before this Board contains the following materials:

- 1) Letter from the previous Zoning Administrator dated August 15, 2011 with enclosure;
- 2) Town Planning Board Meeting Minutes of June 16, 2004;
- 3) Application submitted on behalf of the Probst Family Trust with enclosures;
- 4) Provision which was previously Section 14.10 A of the Horicon Town Zoning Law and now is Section 13.10 A;
- 5) Applicant's Deed;
- 6) Letter from Warren County Real Property Tax Services dated July 6, 2011;
- 7) Letter from the previous Zoning Administrator dated September 15, 2011;
- 8) Letter from the Trustee of the Probst Family Trust dated September 30, 2011;

**Town of Horicon
Zoning Board of Appeals**

**January 24, 2017
Minutes**

WHEREAS, this Board duly conducted a Public Hearing on December 20, 2016 at which time all interested persons were given an opportunity to be heard;

WHEREAS, the Applicant's representative did not appear at that time;

WHEREAS, this Board knows of no Zoning Law provision that gives it any appellate review authority over determinations of the Town Planning Board. However, this Board is undertaking review in order to comply with the Supreme Court's directive.

NOW, THEREFORE, BE IT RESOLVED THAT THE ZBA MAKES THE FOLLOW FINDINGS:

1. This is a Type II Action pursuant to the State Environmental Quality Review Act (SEQRA) and therefore no SEQRA review is required.
2. This Board is being directed to determine whether to overturn or uphold the Planning Board's previous determination that this property was not a "lot on record" as of December 29, 1977.
3. By letter dated September 30, 2011 from the Applicant and letter dated July 6, 2011 from Warren County Real Property Tax Services, it appears that the lot at issue was previously owned by Hobart Rosen who also owned other lands directly to the west. The letters state that Mr. Hobart subdivided his other lands and included those other lands on a subdivision map which was filed in the County Clerk's Office in 1971. The Applicant claims that, despite the fact that the lot at issue was excluded from that subdivision map, the filing of the map in 1971 marks the moment when the lot at issue became "on record" for purposes of Section 13.10 of the Town Zoning Law.
4. Apart from not including the lot at issue on any subdivision map, it appears that the previous owner also did not cause any deed to be recorded in which the lot appears in its current state until 1983.

**Town of Horicon
Zoning Board of Appeals****January 24, 2017
Minutes**

5. The 2004 Planning Board Meeting Minutes reveal that the Planning Board considered whether the lot at issue could be considered “on record” despite not being delineated on any filed subdivision map. That Board determined that the lot at issue was a “stand alone parcel with no description on either subdivision map” and therefore was not a “lot on record” as of December 29, 1977.
6. Despite litigation arising over this lot between 2004 and present, this provision has not been modified by the Town Board to remove or modify the term “on record”. The Zoning Law recently underwent significant revisions, but the requirement that only lots “on record” be relieved of compliance with certain zoning restrictions was not altered.
7. While certain documents were submitted to the Planning Board in 2004, the Applicant did not submit those records to this Board.
8. The Applicant has stated that the existence of the subdivisions to the east and west of this lot suffice to demonstrate that this lot was “on record” as of December 29, 1977. This Board disagrees.
9. While “on record” is not a defined term in the Town Zoning Law, the meaning of this phrase is clear. “On record” is meant to require an official act of creation and not creation by default. Had the Town Board intended to make the requirements less formal, it would not have included “on record” in this provision or kept it in this provision.
10. Exclusion of this lot from the relevant subdivisions is determinative. While the Applicant may have demonstrated that the lot was created by default prior to 1977 due to the adjacent subdivisions, the lot was not “on record” as no filed map containing this lot and no recorded deed describing this lot existed until after December 29, 1977.
11. 514 Palisades Road was not a “lot on record” prior to December 29, 1977.

**Town of Horicon
Zoning Board of Appeals**

**January 24, 2017
Minutes**

Town Attorney Leah Everhart stated that this review effort went as smoothly as possible and the Board did a good job.

A Town Attorney Leah Everhart stated that a letter will be sent with the copy of the resolution to Ms. Altieri.

Zoning Administrator Jim Steen and Town Attorney Leah Everhart had a discussion regarding sending drafts of meeting minutes.

Chairperson Thad Smith asked if there were any more comments.

Being no further questions or comment Vice-Chairperson Cheryl Erickson made a motion to adjourn. Second by Scott Olson. **ALL AYES.**

BOARD COMMENTS: None

PUBLIC COMMENTS: None

MEETING ADJOURNED: 8:40 pm

NEXT MEETING: February 28, 2017