

**RUSH ZONING BOARD OF APPEALS
REGULAR MEETING
MINUTES OF OCTOBER 11, 2012**

A regular meeting of the Rush Zoning Board of Appeals was held on October 11, 2012 at the Rush Town Hall, 5977 East Henrietta Road, and was called to order at 7:00 PM.

BOARD MEMBERS PRESENT: Don Van Lare, Chairman
Robert Weiler
Amber Corbin
Kelly Pruden
Garry Koppers
Meribeth Palmer, Deputy Town Clerk

OTHERS PRESENT: Gerry Kusse, Code Enforcement Officer, Resident
Dan Woolaver, Acting as Town Board Liaison
Bill Riepe, Town Board, Resident
Gerry Kusse, Code Enforcement Officer, Resident
Joseph Giorgione, Property Owner
Daniel Morse, Resident, Business Owner
Lisa Morse, Resident

Chairman Van Lare welcomed all to the Zoning Board of Appeals meeting. Chairman Van Lare also explained that anyone wishing to comment on the public hearing would be allowed to do so.

PUBLIC HEARING:

Application 2012-04Z by Joseph Giorgione requesting a 2 unit residential use variance for the pre-existing structure located at 6101 East Henrietta Road. The proposed use does not comply with 120-12C of the Rush Town Code. Property is zoned commercial.

Application 2012-05Z by Joseph Giorgione requesting an area variance for the property located at 6101 East Henrietta Road. The existing parcel does not comply with 120-17 of the Rush Town Code. Property is zoned commercial.

Application 2012-06Z by Joseph Giorgione requesting a front setback variance for the pre-existing structure located at 6101 East Henrietta Road. The pre-existing structure does not comply with 120-18 of the Rush Town Code. Property is zoned commercial.

Application 2012-07Z by Joseph Giorgione requesting side and rear setback variances for a pre-existing garage located at 6101 East Henrietta Road. The pre-existing garage does not comply with 120-19 of the Rush Town Code. Property is zoned commercial.

Applicant Joseph Giorgione explained that he is proposing a residential two family house. The proposed rental units would consist of a 3 bedroom unit downstairs and a 2 bedroom unit upstairs. Mr. Giorgione stated that he has submitted documentation from Monroe County Department of Public Health (MCDPH) indicating that they have inspected the septic system, it is in compliance and will accommodate a five bedroom dwelling.

Chairman Van Lare noted the Monroe County Department of Planning and Development has ruled the variance requests as a local matter.

Correspondence from Donald Knab, owner of the property located at 1208 Rush West Rush Road, called to verbally inform the Board that he has no objections to Mr. Giorgione's variance requests.

Chairman Van Lare asked if anyone in the audience had questions or comments regarding the variance requests.

With no further comments or requests Chairman Van Lare declared the public hearing closed. With additional board business, application decisions will be made later on during the meeting.

Chairman Van Lare briefly reopened the public hearing in order to give late arrival Daniel Morse a chance to speak.

Mr. Morse stated that the property has been vacant for approximately 12 years. Mr. Morse would like to see Mr. Giorgione be given the variances requested without any delays.

Chairman Van Lare stated that the Board had no intention of delaying the variance requests.

Mr. Morse also stated that the town should ease up on the zoning regulations such as requirements placed on his variance request. Mr. Morse was asked about progress pertaining to his variance and property. Mr. Morse stated "the Zoning Board should know". Mr. Morse addressed Mr. Van Lare stating, "don't worry, one day".

With no further comments Chairman Van Lare closed the public hearing.

INFORMAL:

Landtech Engineer Ed Martin requested an informal discussion regarding plans for multi-unit townhouses and possible rezoning of land located on Rush Henrietta Town Line Road.

Mr. Martin did not appear.

BOARD DISCUSSION:

Town Attorney Frank Pavia understands that there is a willingness to give Mr. Morse a variance with the condition he cleans up his property as required by Rush Town Code and apply for a special permit for overnight parking of vehicles.

Mr. Morse's property has both a commercial business and residence. The zoning board assumes that it pre-dates the current zoning.

Mr. Pavia asked if Mr. Morse has taken any steps to clean up the property. Zoning Board member Kelly Pruden stated that Mr. Morse had made an effort and cleaned up a fair portion of the property.

Mr. Pavia inquired with Gerry Kusse, Code Enforcement Officer, as to the last time he visited the property. Mr. Kusse stated that it has been approximately 6 months.

Mr. Pavia asked if Mr. Morse has applied for the special permit for parking. Mr. Kusse stated that the last conversation he had with Mr. Morse he offered to meet with him and help him complete the special parking permit application. Board member Kelly Pudon expressed that Mr. Morse has stated that he does not want to be required to "jump through hoops". Although Mr. Morse's zoning variance was approved, to date Mr. Morse has not submitted the required special permit application for parking.

Mr. Kusse stated that Mr. Morse is opposed to the balance of clean up required in addition to being regulated for overnight vehicle parking.

Mr. Pavia suggested that Mr. Kusse visit the property now to note current progress. Board member Kelly Pudon expressed that she has been able to have discussions with Mr. Morse. Mr. Pavia suggested that he and Zoning Board member Ms. Pruden meet with Mr. Morse in order to help him continue to move forward with his addition request.

Councilman Riepe - code discussion request

Chairman Van Lare stated that the town was extremely fortunate 9 years ago when Special Permits replaced Temporary Use Permits. At that time the elimination of extractive operations such as natural gas and gravel was added to the code. Adding that today to avoid hydrofracking might not hold up in court. Chairman Van Lare feels this is a strong point of the zoning code preventing hydrofracking unless reviewed by the Planning Board for a special permit. The Zoning Board does not agree with suggestion to remove this portion of the code. Ms. Pruden stated that code changes based on reaction to the hydrofracking issues will only be area of focus. Councilman Riepe brought up additional local concerns and stated that he is here to serve as a voice of the community. If the people want to ban hydrofracking, then that is how he will vote.

Mr. Pavia stated that many communities would like to see it banned. Communities that are in hydrofracking areas are not necessarily adopting laws prohibiting hydrofracking but laws that regulate hydrofracking stringently such as requiring impact fees. Mr. Pavia explained that his firm has been dealing with the gas industry in a variety of circumstances. That is why Harris Beach PLLC has recused themselves from representing the town on moratorium issues.

Board member Amber Corbin stated that she is not in favor of removing the existing Code as it is additional protection for the town.

Mr. Pavia stated that he was asked by Councilman Riepe, if the current code was adequate to protect the town from hydrofracking. Mr. Pavia does not believe that the existing code is drafted in a way that would regulate or protect the community. Other communities have drafted more detailed codes addressing and regulating the specific activity of hydrofracking in order to protect the community. Mr. Pavia stated that the Court of Appeals of the State of New York has yet to decide if municipalities will be able to forbid hydrofracking.

The Zoning Board further discussed hydrofracking and the community impacts.

Other board business:

Chairman Van Lare addressed Mr. Kusse's email question regarding telecommunication towers stating that he does not have an answer and was not privy to the discussion about adding on to the towers. It was suggested the Mr. Kusse reach out to former supervisor Mr. Udicious. Mr. Pavia does not recall there being a zoning process associated with the towers.

Mr. Pavia inquired about the proposed rezoning request by Landtech. Unless already informed they should be apprised of the required SEQR review.

Ms. Corbin inquired with Councilman Dan Woolaver about his comments published in the Town Board minutes of September 26, 2012. Councilman Woolaver stated in page 3, paragraph 5, line 3 "He suggested the Board review the zoning status of properties throughout the hamlet area". Ms. Corbin wanted to clarify what board he is referring to. Councilman Woolaver stated the he was referring to the Town Board.

Chairman Van Lare asked Councilman Woolaver if he is now the liaison for the Zoning Board. Councilman Woolaver would like to be, however, no appointment has been made thus far.

The Zoning Board further discussed hydrofracking and community impacts.

DECISIONS:

Don Van Lare made a Motion **WHEREAS**, this Board has examined **Application 2012-04Z** by Joseph Giorgione for property at 6101 East Henrietta Road, located in a commercial district, requesting a use variance for a two family residence, and the maps and other materials which were submitted with the application, including the Environment Assessment Form and a Monroe County Septic System Inspection Form; and

WHEREAS, the proposed action is an unlisted action under the State of New York SEQR laws; now therefore;

BE IT RESOLVED, that upon its examination and study of the environmental assessment form and the maps and plans submitted with the application, this Board determines that the proposed action will not have a significant effect on the environment. The reasons for this determination are that the proposed action cannot reasonably be expected to lead to any of the following consequences:

- A. a substantial adverse change to ambient air or water quality or noise levels or in solid waste production, drainage, erosion or flooding.
- B. the removal or destruction of large quantities of vegetation or fauna, the substantial interference with the movement of any resident or migratory fish or wildlife species, impacts on critical habitat areas, or the substantial affecting of a rare or endangered species of animal or plant or the habitat of such a species.
- C. the encouraging or attracting of a large number of people to a place for more than a few days, relative to the number of people who would come to such place absent the action.
- D. the creation of a material conflict with the Town's existing plans or goals as officially approved or adopted.
- E. the impairment of the character or quality of important historical, archaeological, architectural or aesthetic resources or of existing community or neighborhood character.
- F. a major change in the use of either the quantity or type of energy.
- G. the creation of hazard to human health or safety.

- H. a substantial change in the use, or the intensity of use of land or other natural resources or in their capacity to support existing uses where such a change has been included, referred to, or implicit in an official comprehensive plan.
- I. the creation of material demand for other actions which would result in one of the above consequences.
- J. changes in two or more elements of the environment, no one of which is substantial, but when taken together result in a material change in the environment.

Amber Corbin seconded the motion and the Board Members polled:

Roll:	Kelly Pruden	aye	
	Amber Corbin	aye	
	Garry Koppers	aye	
	Robert Weiler	aye	
	Don Van Lare	aye	carried.

WHEREAS, Application 2012-04Z was submitted by Joseph Giorgione for property located at 6101 East Henrietta Road, Rush, New York, requesting a use variance from the requirements of the Rush Town Code, Chapter 120-12C, as described in the maps and other materials submitted in the application; and

WHEREAS, a Public Hearing on this application was scheduled and notice was posted as required by law; and

WHEREAS, all persons at the hearing desiring to speak on the matter were heard, all correspondence on the material was read and these statements were considered by this Board; now therefore;

BE IT RESOLVED, that **Application 2012-04Z** is granted for a two family residence as requested in the plans submitted in the application.

The reasons for this action are:

1. The property has been the site of a single, then a two family residence since 1900;
2. There is no record of this property ever being used for any use in a commercial district;
3. The property is only one-half acre, which is 50% of the minimum requirement for a commercial district, greatly restricting any active commercial activity;

4. This property along with other neighboring properties are primarily single family and two family residences not engaged in business occupations;
5. There is no discernible detriment to the health, safety or welfare of the community that would occur by the granting of this variance;
6. There would be no noticeable change to the character of the neighborhood by the granting of this variance.

The following conditions apply:

1. No work shall commence until a Building Permit is obtained from the Town of Rush;
2. The driveway and parking area is to be made of asphalt, concrete, or gravel of a suitable depth;
3. The parking area is to be screened from the adjacent property by evergreen plantings;
4. The construction of the proposed two family residences is to be completed within one year of the approval of this application.

Amber Corbin seconded the motion and the Board Members polled:

Roll:	Kelly Pruden	aye	
	Amber Corbin	aye	
	Garry Koppers	aye	
	Robert Weiler	aye	
	Don Van Lare	aye	carried.

Garry Koppers made a Motion **WHEREAS**, the Board has examined **Application 2012-05Z** submitted by Joseph Giorgione for the property at 6101 East Henrietta Road, Rush, New York, located in a commercial district, requesting an area variance for lot size and lot depth, and the map and other materials which were submitted with the application; and

WHEREAS, the application is solely for an area variance; now therefor;

BE IT RESOLVED, that this Board determines that it is a Type II Action, which requires no further processing under SEQR. The reason for this determination is that Section 617.5c(12) of Title 6 of the New York Code of Rules and Regulation, in listing Type II Actions, includes the granting of individual setback and lot line variances.

Don Van Lare seconded the motion and the Board Members polled:

Roll: Kelly Pruden aye
 Amber Corbin aye
 Garret Koppers aye
 Robert Weiler aye
 Don Van Lare aye carried.

WHEREAS, Application 2011-05Z was submitted by Joseph Giorgione for property located at 6101 east Henrietta Road, Rush, New York requesting variances from a minimum area requirement of one (1) acre and a minimum depth requirement of two (200) feet as set forth in the Rush Town Code, Chapter 120-17 as described in such maps and diagrams submitted with the application; and

WHEREAS, a public hearing on this application was scheduled and notice was posted as required by law; and

WHEREAS, all persons at the hearing desiring to speak on the matter were heard, all correspondence on the matter was read and statements were considered by this Board, and; now therefore;

BE IT RESOLVED, that **Application 2011-05Z** be granted as requested in the plans submitted with the application. The proposed two family residential structure may be located on a parcel of one-half (.5) acres with a depth of one hundred forty one point fifty two (141.52) feet.

The reasons for this action are:

1. The Property has been the site of a single, then a two family residence since 1900;
2. There is no record of this property ever being used for any use permitted in a commercial district;
3. This Property along with other neighboring properties are primarily single and two family residences not engaged in business occupations;
4. There is no discernible detriment to the health, safety or welfare of the community that would occur by the granting of this variance;
5. There would be no noticeable change to the character of the neighborhood by the granting of this variance.

The following conditions apply:

1. This application is contingent upon the approval of Application 2012-04Z.

Don Van Lare seconded the motion and the Board Members polled:

Roll: Kelly Pruden aye
 Amber Corbin aye
 Garret Koppers aye
 Robert Weiler aye
 Don Van Lare aye carried.

Bob Weiler made a Motion **WHEREAS**, This Board has examined **Application 2012-06Z** by Joseph Giorgione of 6101 East Henrietta Rd, located in a commercial district, requesting a front setback variance for an existing residence, and maps and other materials which were filed with the application; and

WHEREAS, the application is solely for an area variance; now therefor;

BE IT RESOLVED, that this Board determines that it is a Type II action, which requires no further processing under SEQR. The reason for this determination is that Section 617.5c(12) of Title 6 of the New York Code of Rules and Regulation, in listing Type II Actions, includes all variances for relief from granting of individual setback and lot line variances.

Don Van Lare seconded the motion and the Board Members polled:

Roll: Kelly Pruden aye
 Amber Corbin aye
 Garret Koppers aye
 Robert Weiler aye
 Don Van Lare aye carried.

WHEREAS, **Application 2012-06Z** was submitted by Joseph Giorgione for property at 6101 East Henrietta Rd. requesting a variance from a front setback requirement for structures of one hundred forty (140) feet as set forth in the Code of Rush Chapter 120-18, as described in such map and diagrams submitted with the application; and

WHEREAS, a public hearing on this application was scheduled and notice was posted as required by law; and

WHEREAS, All persons at the hearing desiring to speak on the matter were heard, all correspondence on the matter was read and statements were considered by this Board; now therefor;

BE IT RESOLVED, that the **Application 2012-06Z** be granted as requested in the plans submitted with the application. The existing residence as identified in the plan shall be placed no closer than 66 feet from the centerline of East Henrietta Road. The following conditions apply:

1. No Conditions are required.

The reasons for this action are:

1. There will be no undesirable change in the character of the Neighborhood;
2. There is no discernible detriment to the health, safety or welfare of the neighborhood.

Kelly Pruden seconded the motion and the Board Members polled:

Roll: Kelly Pruden aye
 Amber Corbin aye
 Garret Koppers aye
 Robert Weiler aye
 Don Van Lare aye carried.

Bob Weiler made a Motion **WHEREAS**, This Board has examined **Application 2012-07Z** by Joseph Giorgione of 6101 East Henrietta Rd, located in a Commercial district, requesting a Side and Rear setback variances for an existing garage, and maps and other materials which were filed with the application; and

WHEREAS, the application is solely for an area variance; now therefor;

BE IT RESOLVED, that this Board determines that it is a Type II action, which requires no further processing under SEQR. The reason for this determination is that Section 617.5c(12) of Title 6 of the New York Code of Rules and Regulation, in listing Type II Actions, includes all variances for relief from granting of individual setback and lot line variances.

Don Van Lare seconded the motion and the Board Members polled:

Roll: Kelly Pruden aye
 Amber Corbin aye
 Garret Koppers aye
 Robert Weiler aye
 Don Van Lare aye carried.

WHEREAS, Application 2012-07Z was submitted by Joseph Giorgione for property at 6101 East Henrietta Rd. requesting a variance from a Side and Rear setback requirement for structures of twenty five (25) feet each as set forth in the Code of Rush Chapter 120-19, as described in such map and diagrams submitted with the application; and

WHEREAS, a public hearing on this application was scheduled and notice was posted as required by law; and

WHEREAS, All persons at the hearing desiring to speak on the matter were heard, all correspondence on the matter was read and statements were considered by this Board; now therefor;

BE IT RESOLVED, that the Application be granted as requested in the plans submitted with the application. The existing garage as identified in the plan shall be placed no closer than 8 feet from the North side of the property line, no closer than 2 feet from the West side of the property line, and no closer than 5 feet from the South side of the property line.

The following conditions apply:

1. No Conditions are required.

The reasons for this action are:

1. There will be no undesirable change in the character of the Neighborhood;
2. There is no discernible detriment to the health, safety or welfare of the neighborhood;
3. The size and formation of the garage's concrete foundation slab precludes the relocation of the building.

Amber Corbin seconded the motion and the Board Members polled:

Roll:	Kelly Pruden	aye	
	Amber Corbin	aye	
	Garret Koppers	aye	
	Robert Weiler	aye	
	Don Van Lare	aye	carried.

APPROVAL OF MINUTES: September 13, 2012

Don Van Lare made a motion to approve the Minutes of July 12, 2012 as written.

Kelly Pruden seconded the motion and the Board Members polled.

Roll:	Don Van Lare	aye	
	Robert Weiler	aye	
	Amber Corbin	aye	
	Kelly Pruden	aye	
	Garry Koppers	aye	carried.

RUSH ZONING BOARD OF APPEALS
OCTOBER 11, 2012

With no further business, a motion was made by Don Van Lare and agreed by common consent that the meeting be adjourned at 8:00 PM.

Respectfully Submitted,

Meribeth Palmer
DeputyTown Clerk