

**RUSH ZONING BOARD OF APPEALS
REGULAR MEETING
MINUTES OF April 11, 2013**

A regular meeting of the Rush Zoning Board of Appeals was held on April 11, 2013 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, Town Board Liaison
Nick Montanaro, Engineer
Robert McRae, Resident
Todd McRae, Resident
Lee Hankins, Resident
Kathryn Hankins, Resident
Harriet Cook, Resident
Susan Hennessy, Resident
Julia Lederman, Conservation Board, Resident
Ansgar Schmid, Resident
Marianne Rizzo, Resident
Dick Updaw, Resident
Patricia Kraus, Conservation Board, Resident
Jeffrey Metchick, Resident

Chairman Van Lare welcomed all to the Zoning Board of Appeals meeting and asked audience members to please sign in on the sheet provided.

ADJOURNED APPLICATION:

Application 2013-01P by Robert Turner and land owner Henry Hansen requesting a use variance for the development of a 12,750 square foot building to accommodate an office and storage for commercial drilling equipment/vehicles. Property is located at 7566 West Henrietta Road and is in a commercial district.

Chairman Van Lare announced that late today the Zoning Board of Appeals received another request from the Attorney(s) for Mr. Turner and Mr. Hansen requesting another postponement of their application. With the advice of the Attorney's for the Town of Rush, Chairman Van Lare regretfully adjourns this meeting on Application 2013-01Z until Thursday May 9, 2013 at 7:00PM.

If any development occurs prior to that date, the public will be notified through the Town of Rush web site and by a posting in the Town Hall.

Resident Jeffrey Metchick stated that his daughter's birthday is May 9th and asked if the Board could adjourn the meeting that night. Mr. Metchick stated that his statement was not in jest and that he is serious. The Board again replied that they regret having to postpone tonight's meeting and it is rescheduled for May 9th.

PUBLIC HEARING:

Application 2013-02Z and **Application 2013-03Z** by Ralph Harding requesting two area variances required for a proposed subdivision and site plan for property located at 40 Scofield Road. Proposed lot widths do not comply with 120-17 of the Rush Town Code. Property is located in an R-30 zoning district.

Land Surveyor Nick Montanaro appeared on behalf of Mr. Harding. Mr. Montanaro explained that Mr. Harding would like to subdivide his existing 2 parcels consisting of approximately 50 acres into 3 parcels. Mr. Montanaro submitted a revise map showing an increase of acreage to Lot 3 as recommended by the Planning Board in order to move the proposed house away from the easement. Although Lot 3 was increased in size the proposed house is still located against the easement. This change leaves 50 feet on the east side of Lot 3 for the farm lane. Mr. Harding is requesting lot width variances for Lots R-1 and R-2a each consisting of 50.15 feet in width. Lot 3 conforms to Code with a lot width of 217 feet.

The Board confirmed the location of the existing easement belonging to neighbor Robert McRae and discussed the potential use of the easement. The easement expands over all 3 lots of the proposed subdivision as presented. An additional proposed easement for lot R-1 would overlap Mr. McRae's existing easement. Mr. Montanaro stated that overlapping easements are not uncommon. Mr. Montanaro read into the record the recorded easement that is part of the current deed. Again, Mr. Montanaro stated that Mr. Harding's proposal will not interfere with the existing easement in any way.

Mr. Montanaro stated this proposed subdivision is the only way Mr. Harding can develop his land and still maintain the current farmed land. The Board pointed out two alternatives for house placement that would not require a variance.

The Board stated that Mr. Harding is asking for variances for two parcels that are only 50 feet wide and more than a quarter of a mile long. The Chairman stated that the Board must give careful consideration to requested variances if there are suitable or viable alternatives available. The Board discussed installing a driveway for proposed Lot R-1. The Chairman stated concern for the multiple-use of one driveway, existing easements and maintenance responsibility of a shared driveway.

Board Member Weiler made a recommendation of making the driveway a dedicated town road. This will also accommodate any future development.

Resident Robert McRae stated that he owns the parcel directly east of Mr. Harding's property and the filed easement gives him accessibility to his parcel. Although his parcel borders NYS Route 15A, safety is a concern. The guardrail along his parcel has been hit 6-7 times and still shows the remains of the last accident. The easement gives him safe accessibility to his land. Mr. McRae wants assurances that if the variances and subdivision are granted that the town will still allow him to build on his lot and use the access easement for ingress and egress.

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

INFORMAL DISCUSSION:

Jason Beyor of 6550 East River Road to discuss variances for the outdoor storage of an enclosed utility trailer and a dump trailer.

Mr. Beyor explained that he was cited with a violation for parking his trailers in the driveway.

Chairman Van Lare informed Mr. Beyor that the placement of the trailers will depend on their use.

Mr. Beyor explained that he is a self employed contactor and the enclosed trailer houses all his tools for work. The smaller dump trailer is used occasionally for work but mostly for hauling brush and maintaining his property. Mr. Beyor explained that he travels directly to jobs sites from his house and the only part of his business that is located at his house is the enclosed trailer.

Chairman Van Lare stated that his personal dump trailer is permitted behind the house.

Mr. Beyor explained that the land behind his house drops off at a steep slope and it would be difficult to access it on a regular basis particularly after rain. The Board asked if he could place gravel or top soil allow placement of the trailer behind the house. Mr. Beyor stated that accessibility would still be difficult.

The Chairman informed Mr. Beyor that everyone has a right to file for a variance, however, the Board has been consistent in not allowing boats, trailers and similar items forward of the primary dwelling as stated in the Rush Town Code.

The commercial enclosed work trailer used for his home occupation is not permitted on the property. Chairman Van Lare read section 120-7A (5) of the Rush Town Code regarding accessory uses.

Mr. Beyor inquired and was told that building a barn to store his equipment would be acceptable. Mr. Beyor asked about the possible locations for the barn. Code Enforcement Officer (CEO) Kusse would be able to help Mr. Beyor with location requirements. Mr. Beyor noted that he discussed his trailers with his neighbors and they have no objections. Mr. Beyor is concerned about storage of his trailers until he is able to find a solution or erect a barn.

The Chairman stated that Mr. Beyor could inquire with the Planning Board regarding a special permit for the storage of the commercial trailer under section 120-7B (13) of the Rush Town Code.

The Board recommended that Mr. Beyor keep CEO Kusse informed of his progress.

BOARD DISCUSSION:

Board Member Weiler made a positive comment regarding Mr. Harding variance request. Mr. Harding is maintaining a majority of the property for agricultural farming. However, this particular property is very unique in shaped and already has a narrow driveway. The two proposed flag lots are not favorable for many reasons. Additional of the difficulties of this request include the current easement, the proposed easement and the existing utility easement. Board Member Weiler also noted that the large parcel of remaining land always has potential for future development and that expanding the width of the existing driveway in order to create a town road would be a suitable solution.

Chairman Van Lare stated that if the applications are approved as presented there will be 2 flag lots, both 50 feet wide and up to a quarter of a mile in length. One flag lot will have 3 property owners using one driveway and the other flag lot will have no driveway. The Chairman has requested that the applicant come up with an alternate plan.

Board Member Corbin expresses concerns regarding all of the above said items in addition to the current easement that encumbers part of Lot 3. Although Lot 3 was enlarged the placement of the proposed house remains directly against the existing easement.

The Board further discussed the complicated plan and alternatives that would be more acceptable.

Code Enforcement Officer Kusse commented on flag lots in Rush and area towns. What concerned CEO Kusse was that the property owner stated the he would take responsibility for maintaining the driveway and that could create potential problems.

Board Member Koppers stated that when he recently viewed the property the driveway was blocked by logging trucks. If there were ever an emergency and the driveway was blocked emergency vehicles would not be able to reach the houses.

DECISIONS:

Board Member Weiler made a motion **WHEREAS**, This Board has examined **Application 2013-02Z** by Ralph Harding of 40 Scofield Road, located in an R-30 district, requesting an area variance for Lot R-1 of the proposed subdivision and site plan, and maps and other materials which were filed with the Application.

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

BE IT RESOLVED, that this Board determines that it is a Type II action, which requires no further processing under SEQ. 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.

Chairman Van Lare 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.

WHEREAS, Application 2013-02Z was submitted by Ralph Harding for property at 40 Scofield Road requesting a variance from a minimum front lot width of 150 feet for the proposed subdivision as set forth in the Code of Rush Chapter 120-17 as described in such map and diagrams submitted with the application.

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, then,

BE IT RESOLVED, that the Application be granted as requested in the plans submitted with the application. The proposed lot, identified as lot R-1, shall be no less than 50.15 feet in front width.

The following conditions apply:

1. No conditions are required.

The reasons for this action are:

1. The proposed subdivision appears reasonably constructed for the intended use for three viable lots and proposed housing,
2. There will be no undesirable change in the character of the neighborhood,
3. There is no discernible detriment to the health, safety or welfare of the community or neighborhood that would occur by the granting of this variance.

Board Member Corbin seconded the motion and the Board Members polled.

Roll: Don Van Lare no
 Robert Weiler aye
 Amber Corbin no
 Kelly Pruden no
 Garry Koppers no motion defeated.

Comments regarding defeated application 2013-02Z:

Chairman Van Lare read the following statement regarding Application 2013-02Z:

The applicant has been advised by this Board to consider alternatives to his application that do not require variances or at least minimize such variances from the substantial amounts requested.

If this application is approved, proposed parcel #1 will be only 50.5 feet in width at the setback and over 1500 feet deep. The total original frontage of this property is over 367 feet.

This parcel will also be void of a driveway to enter and exit the property.

The original driveway is now located on proposed parcel # R-2a. Potential buyers may not wish to own such a parcel without a driveway located on the property.

In addition, apparently, a neighboring property owner has an easement on his property that is approximately 831 by 155 feet and extends to the frontage on Scofield Road.

This application should be denied and the applicant can then consider the various alternatives available.

Board Member Corbin commented that she agrees with the comments made by Chairman Van Lare.

Board Member Pruden agrees with all comments stated above. Board Member Pruden stated that her main concern is there is no anticipation for future plans or changes to the property and possible problematic logistics.

Board Member Weiler made a motion **WHEREAS**, This Board has examined **Application 2013-03Z** by Ralph Harding of 40 Scofield Road, located in an R-30 district, requesting an area variance for Lot R-2a of the proposed subdivision and site plan, and maps and other materials which were filed with the Application.

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

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.

Chairman Van Lare 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.

WHEREAS, Application 2013-03Z was submitted by Ralph Harding for property at 40 Scofield Road requesting a variance from a minimum front lot width of 150 feet for the proposed subdivision as set forth in the Code of Rush Chapter 120-17 as described in such map and diagrams submitted with the application.

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, then,

BE IT RESOLVED, that the Application be granted as requested in the plans submitted with the application. The proposed lot, identified as lot R-2a, shall be no less than 50.15 feet in front width.

The following conditions apply:

1. No conditions are required.

The reasons for this action are:

1. The proposed subdivision appears reasonably constructed for the intended use for three viable lots and proposed housing,

2. There will be no undesirable change in the character of the neighborhood,
3. There is no discernible detriment to the health, safety or welfare of the community or neighborhood that would occur by the granting of this variance.

Chairman Van Lare seconded the motion and the Board Members polled.

Roll:	Don Van Lare	no	
	Robert Weiler	aye	
	Amber Corbin	no	
	Kelly Pruden	no	
	Garry Koppers	no	motion defeated.

Comments regarding defeated application 2013-03Z:

Chairman Van Lare read the following statement regarding Application 2013-03Z:

The applicant has been advised by this Board to consider alternatives to his application that do not require variances or at least minimize such variances from the substantial amounts requested.

If the application is approved, proposed parcel #R-2a will only be fifty feet wide at the setback but contain over 45 acres, creating a significant “flag lot”.

Lot R-2a is proposed to contain a single unpaved driveway to serve as many as three property owners, their family and guests. The parcel is not large enough in width (60 feet) to accommodate a local or private road. The Board has witnessed many problems caused by shared use of a single driveway.

This application should be denied and the applicant can then consider the various alternatives available.

Board Member Corbin stated that again she agrees with Chairman Van Lare’s comments. Board Member Corbin informed the audience that the Zoning Board has been consistent in their rulings regarding flag lots.

BOARD BUSINESS:

Councilman Woolaver had no report.

Code Enforcement Officer Kusse commented on flag lots in Rush and area towns. What concerned CEO Kusse was that the property owner stated the he would take responsibility for maintaining the driveway and that could create potential problems.

Board Member Koppers stated that if the driveway were blocked, as it was when they viewed the property recently, there would be no other way for emergency vehicles to reach the houses.

Approval of Minutes: March 14, 2013

Don Van Lare made a motion to approve the Minutes of March 14, 2013.

Robert Weiler 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.

Approval of Minutes: March 26, 2013 Special Meeting.

Don Van Lare made a motion to approve the Minutes of the Special Meeting on March 26, 2013.

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.

With no further business, a motion was made by Don Van Lare and agreed by common consent that the meeting be adjourned at 8:10 PM.

Respectfully submitted,

Meribeth Palmer
Deputy Town Clerk