

**RUSH ZONING BOARD OF APPEALS
REGULAR MEETING
MINUTES OF JUNE 13, 2013**

A regular meeting of the Rush Zoning Board of Appeals was held on June 13, 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
Jeremy Remchuk, Resident
James Scancarello, Resident
Frances Scancarello, Resident
Curran Brown, Resident
Christine Brown, Resident
Ralph Harding, Resident
Nick Montanaro, Land Surveyor
Robert McRae, Resident
Karyl McRae, Resident
Todd McRae, Resident
Al Steinfeldt, Resident
Lee Hankins, Resident
Robert Nesbitt, Resident
Peggy Nesbitt, Resident
Carol Barnett, Resident
Jeffrey Metchick, Resident
Roger Dolliver, Resident
David Wahl, Resident
Patti Stewart, Resident
Pat Kraus, Conservation Board, Resident
Henry Hansen, Property owner
Robert Turner, Attendee
James J. Bonsignore, Attorney for applicant
John Clark, Engineer

Chairman Van Lare welcomed all to the Zoning Board of Appeals.

PUBLIC HEARING:

Application 2013-05Z by James and Frances Scancarello requesting a front setback variance for a gazebo. The proposed location does not comply with 120-18 of the Rush Town Code. Property is located at 6745 East River Road and zoned R-30.

The Scancarello's explained that they are requesting a setback variance to place a gazebo in their back yard. The proposed placement will require a front setback variance from the centerline of Telephone Road Extension. Scancarello's would like place the gazebo inside of an evergreen tree line, therefore, screening the gazebo from the road. The Scancarello's corner lot is unique in that they have two front setbacks.

The Scancarello's also submitted additional information requested by the Zoning Board indicating the distance to main structures of adjacent property owners and letters from 4 neighbors stating that they have no objections to the proposed gazebo.

Chairman Van Lare read all correspondence into the record. Monroe County Department of Planning and Development (MCDP&D) ruled the application a local matter. The Rush Conservation Board does not find any aspect of the project to have significant impact on the environment. Chairman Van Lare noted that letters of support were submitted by the following neighbors: Vosefski, Enos, Grebner and Horton.

With no further comment Chairman Van Lare declared the Public Hearing closed.

Application 2013-06Z by Jeremy and Pamela Remchuk requesting a side setback variance for a shed. The proposed location does not comply with 120-19 of the Rush Town Code. Property is located at 19 Keyes Road and zoned R-30.

Mr. Remchuk explained that he is asking for a variance to place a shed in location that is level and dry. Mr. Remchuk is requesting to place the shed closer than 25 feet to the side lot line and no more than 10 feet from the lot line. Mr. Remchuk explained that although the neighbors on either side of him did not submit letters of support, they are willing to verify that they have no objection by phone.

Chairman Van Lare read all correspondence into the record. MCDP&D ruled the application a local matter. The Rush Conservation Board does not find any aspect of the project to have significant impact on the environment.

With no further comment Chairman Van Lare declared the Public Hearing closed.

Application 2013-07Z and **Application 2013-08Z** by Ralph Harding requesting two area variances required for a proposed subdivision and site plan for property located at 40 and 46 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.

Engineer Mr. Montanaro explained that Mr. Harding is requesting width at setback variances for 2 flag lots. Lot R-1 is proposed at 50.15 feet in width and Lot R-2a is proposed at 60.18 feet in width. Lot R-2a was increased to 60.18 as suggested in a previous workshop. Mr. Montanaro stated that Mr. Harding is also proposing to install a second driveway to serve the existing house on Lot R-1 rather than having a shared driveway for both lots. The 3rd proposed lot does not require any variances.

Resident Robert McRae expressed his concern for 3 driveways within 130 feet on a hill with questionable site distance. He also stated that his ingress/egress easement will cover all 3 proposed lots. Mr. McRae informed the Board that placing a house on that hill could significantly change the drainage which could directly affect his house, especially after the recent rain and flooding.

Chairman Van Lare stated that the Zoning Board can only address the variance requests. The drainage and site distance for driveways will be studied and addressed by the Planning Board during subdivision and site plan review.

Mr. Montanaro replied that Mr. Harding's proposal will not affect or encumber Mr. McRae's existing easement.

Resident Todd McRae asked the Zoning Board if any kind of precedent has been set regarding the approval of flag lots and if the Board was concerned, that if approved, this application could set a precedent giving future requests more weight.

Chairman Van Lare responded stating that the Zoning Board has disapproved flag lots in the past for undeveloped land and that precedents are a possibility if the primary subdivision was executed without any consideration to future consequences. The Zoning Board often works with problems that were created 20 or 30 years ago.

Chairman Van Lare read correspondence into the record. MCDP&D ruled the application a local matter. The Rush Board of Fire Commissioners recommended that sprinkler systems be installed and adequate turnarounds for emergency vehicles. Additional comments from MCDP&D and the comments from the Rush Board of Fire Commissioners will be forwarded to the Rush Planning Board. The Rush Conservation Board asked if the property is in an agricultural district.

Chairman Van Lare explained that agricultural districts are not mentioned in the Rush Zoning Code and they are not a factor in the deliberation of the Zoning Board dealing with variance requests.

With no further comment Chairman Van Lare declared the Public Hearing closed.

Although meetings are open to the public, Chairman Van Lare explained to the audience that the Board will be holding 3 workshops between the applicants and the Board. The Board only entertains public input during public hearings, therefore, no public comment will be allowed.

WORKSHOP:

Application 2013-09Z by Curran and Christine Brown requesting a front setback variance for a barn. The proposed location does not comply with 120-18 of the Rush Town Code. Property is located at 30 Rotzel Road and zoned R-20.

Mr. Brown submitted a new site plan showing the proposed location of the barn. The Browns live on a corner lot and have 2 front setbacks. Mr. Brown stated that they would like to line the barn up with the house for aesthetics. This would comply with the required setback from East River Road. However, a front setback variance will be required from Rotzel Road. The current house is what the Zoning Board calls pre-existing/non-conforming. The Zoning Board also confirmed that the barn would not be forward of the house.

Chairman Van Lare reviewed the application questions. It was noted that locations of all structures on adjacent properties and their distances from the proposed barn will be added to Mr. Brown's map.

The applicant was informed that 1 or 2 Board members would be making arrangements to view property prior to the public hearing.

The public hearing will be scheduled for July 11, 2013.

Application 2013-10Z by Andrew and Laurie Shepland requesting a front setback variance for a garage addition. The proposed location does not comply with 120-18 of the Rush Town Code. Property is located at 290 Keyes Road and zoned R-30.

Mr. Shepland appeared to request a front setback for a proposed garage addition. Mr. Shepland is asking for a 3 foot variance. The Board reviewed the details of map that Mr. Shepland submitted with the application.

Mr. Shepland was asked to add the names of adjoining property owners.

The applicant was informed that 1 or 2 Board members would be making arrangements to view the property prior to the public hearing.

The public hearing will be scheduled for July 11, 2013.

Application 2013-11Z by Henry Hansen requesting a use variance for the development of 7.83 acres to place a 12,750 square foot building to accommodate an office and storage space for commercial equipment/vehicles. Property is located at 7566 West Henrietta Road and is in a commercial district.

Chairman Van Lare opened the discussion stating that in March of 2013 the Zoning Board was ready to make a motion regarding the prior application when it received a request for adjournment only hours prior to the meeting from the applicant's attorney James J. Bonsignore. This matter was discussed with Rush Town Attorney Mancuso and the public hearing was adjourned to the April 2013 meeting. Again, the Board was set to make a decision in April and an additional adjournment was requested. After the second adjournment the Zoning Board heard nothing from the applicant or from Mr. Bonsignore. Prior to the May meeting, Rush Town Attorney Mancuso sent a letter to Mr. Bonsignore stating that the applicant needed to take action or withdraw. The application was withdrawn on May 6, 2013.

Mr. Bonsignore stated that the reason for withdrawing the previous application was due to some confusion regarding exactly what was being proposed. Engineer John Clark stated the new application indicates a proposal for a use variance of 7.83 acres to accommodate Turner Underground Installations for the original proposed plan plus reasonable business growth including an area to the south for the outdoor storage of vehicles until a second 12,000 square foot building can be built. It was also stated that it is unclear how much additional equipment could be acquired over the next few years.

Board member Weiler asked what the applicant's intention was for the remaining 17.17 acres of the proposed 25 acre lot. Mr. Bonsignore noted that a good portion is wetland and there is no further intent to develop Turner Underground Installations on the remainder of the property. Mr. Bonsignore stated that use variance standards indicate that the minimum amount of relief should be requested to alleviate hardships and the 7.83 acres encompasses that. Mr. Bonsignore stated that Mr. Hansens hardship is the inability to sell the property and receive a reasonable return meantime. Mr. Bonsignore stated that although the new request is more than the first proposal, it is still limited in comparison to the remaining property. The new request is approximately 10% of the entire parcel prior to any proposed subdivision.

Chairman Van Lare informed Mr. Bonsignore that many questions were directed to the applicant regarding indoor storage and expansion.

Mr. Bonsignore stated that limiting the variance to such a small area as in the previous application just did not make sense for regular business growth. After careful review with the applicant the 7.83 acres is the maximum use that is being proposed.

Chairman Van Lare stated that the new proposal is extensive and may not have a lot of support.

Mr. Bonsignore stated that under the commercial zone this property could potential be developed in a much larger scale and the applicants proposal actually limits the use far more than the existing zoning. In addition, Mr. Bonsignore stated that the current request would have less of an impact on the community as well.

Chairman Van Lare reminded Mr. Bonsignore that it was Mr. Hansen who requested to have the parcel rezoned to commercial.

Mr. Bonsignore stated that the rezoning was 30 years ago and they are currently looking for the minimum amount of use and that and if the Board does not see fit to grant the variance the sale of the property will fail.

Chairman Van Lare stated that if that is the case then he suggests that Mr. Hansen seek rezoning from the Town Board.

The public hearing will be scheduled for July 11, 2013.

Mr. Bonsignore requested that the agenda and legal notice be revised to reflect the new application requesting 7.83 acres of use.

Engineer John Clark will submit a revised description to Deputy Town Clerk Palmer.

REPORTS:

Councilman Woolaver had no report.

APPLICATION ASSIGNMENTS:

Board Member Weiler has been assigned to Application 2013-09Z.

Board Member Koppers has been assigned to Application 2013-10Z.

Chairman Van Lare and Board Member Corbin have been assigned to Application 2013-11Z.

DECISIONS:

Board Member Koppers made a motion **WHEREAS**, this Board has examined Application 2013-05Z, submitted by James and Frances Scancarello located on 6745 East River Road, located in an R-30 Zoning District, requesting front setback variance for a proposed 16' x 12' Gazebo, from the northwest boundary line, and the maps, and diagrams and other materials were submitted with the application; and

WHEREAS, the application is solely for an Area Variance; now

BE IT RESOLVED that this Board determines that this is a Type II SEQR 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 Regulations, in listing Type II Actions, includes "granting of individual setbacks and lot line variances."

Board Member Corbin 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 2013-05Z was submitted by James and Frances Scancarello of 6745 East River Road, requesting a variance from a front setback requirement for structures of at least one hundred (100') feet as set forth in the Code of Rush, Chapter 120-18, as described in the 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 was read and those statements were considered by this Board; then

BE IT RESOLVED, that Application 2013-05Z be granted as requested in the plans submitted with this application, subject to the following conditions:

1. The 16'x12' gazebo shall be placed no closer than sixty (60) feet from the front highway center line of Telephone Road Extension;
2. No work is to be commenced until a Building Permit is obtained from the Town of Rush;
3. The construction of this gazebo is to be completed within one year of the approval of this application.

The reasons for this action are:

1. The home is located on a corner lot which requires 2 front setbacks;
2. The placement of the gazebo is consistent with the neighborhood and the proximity of other pre-existing buildings on the road;
3. There will be no undesirable change in the character of the neighborhood;
4. 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 aye
 Robert Weiler aye

Amber Corbin aye
Kelly Pruden aye
Garry Koppers aye carried.

Board Member Corbin made a motion **WHEREAS**, this Board has examined Application 2013-06Z, submitted by Jeremy and Pamela Remchuk of 19 Keyes Road, Rush, NY, located in a R-30 District, requesting a side setback variance for a proposed 14' x 20' detached storage shed, located on the northeast side boundary line, and the maps, and diagrams and other materials were submitted with the application; and

WHEREAS, the application is solely for an Area Variance; now

BE IT RESOLVED that this Board determines that this is a Type II SEQR 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 Regulations, in listing Type II Actions, includes "granting of individual setbacks and lot line variances."

Board Member 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.

WHEREAS, Application 2013-06Z was submitted by Jeremy and Pamela Remchuk of 19 Keyes Road, Rush , NY, requesting a variance from the side setback requirement for structures of at least twenty-five feet (25') as set forth in the Code of Rush, Chapter 120-19, as described in the 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 was read and those statements were considered by this Board; then

BE IT RESOLVED, that Application 2013-06Z be granted as submitted with the application, subject to the following conditions:

1. The north east corner of the detached storage shed, as proposed in the plan, shall be placed no closer than ten feet (10') from the north east property line;
2. The proposed detached storage shed shall not exceed fourteen feet by twenty feet (14' x 20');

3. No work is to be commenced or placement of the storage shed, until a Building Permit is obtained from the Town of Rush;
4. The construction of this detached storage shed is to be completed within one year of the approval of this application.

The reasons for this action are:

1. Due to the location of the septic, existing structures, and steep decline in the back yard, the area selected by the applicant provides the most viable option for the location of the shed;
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 aye
 Robert Weiler aye
 Amber Corbin aye
 Kelly Pruden aye
 Garry Koppers aye carried.

Chairman Van Lare made a motion **WHEREAS**, this Board has examined **Application 2013-07Z** by Ralph Harding of 40 Scofield Road, located in a R-30 District, requesting an area variance for Lot R-1 of a proposed subdivision as shown in the site plan map, and diagrams and other materials which were submitted with the application; and

WHEREAS, the application is solely for an Area Variance; now

BE IT RESOLVED that this Board determines that this is a Type II SEQR 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 Regulations lists “the granting of individual setbacks and lot line variances” as a Type II Action.

Board Member Corbin 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 2013-07Z was submitted by Ralph Harding of 40 Scofield Road, requesting a variance from the minimum front lot width of 150 feet, as set forth in the Rush Town Code Chapter 120-17, for the proposed subdivision as described in the application and maps 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 was read and those statements were considered by this Board; then

BE IT RESOLVED, that Application 2013-07Z 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 wide at front setback.

The following condition applies:

The approval of this variance is contingent upon completion of the proposed driveway identified in the application.

The reasons for this action are:

1. Proposed Lots R-1 and R-2a will each have its own individual driveway;
2. There appears to be no significant change in the character of the neighborhood;
3. There is no discernible detriment to the health, safety or welfare of the community that would occur by the granting of this variance.

Board Member 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.

Chairman Van Lare made a motion **WHEREAS**, this Board has examined **Application 2013-08Z** by Ralph Harding of 40 Scofield Road, located in a R-30 District, requesting an area variance for **Lot R-2a** of a proposed subdivision as shown in the site plan map, and diagrams and other materials which were submitted with the application; and

WHEREAS, the application is solely for an Area Variance; now

BE IT RESOLVED that this Board determines that this is a Type II SEQR 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 Regulations lists “the granting of individual setbacks and lot line variances” as a Type II Action.

Board Member Corbin 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 2013-08Z was submitted by Ralph Harding of 46 Scofield Road, requesting a variance from the minimum front lot width of 150 feet, as set forth in the Rush Town Code Chapter 120-17, for the proposed subdivision as described in the application and maps 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 was read and those statements were considered by this Board; then

BE IT RESOLVED, that Application 2013-08Z be granted as requested in the plans submitted with the application. The proposed lot identified as Lot R-2a shall be no less than 60.18 feet wide at front setback.

The following condition applies:

The approval of this variance is contingent upon completion of the proposed driveway identified in Application 2013-07Z.

The reasons for this action are:

1. Proposed Lots R-1 and R-2a will each have its own individual driveway;
2. Lot R-2a will have a 60 foot width that could be converted to a local road should additional development warrant.
3. There appears to be no significant change in the character of the neighborhood;
4. There is no discernible detriment to the health, safety or welfare of the community that would occur by the granting of this variance.

Board Member 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: May 9, 2013

Chairman Van Lare made a motion to approve the Minutes of May 9, 2013 as written.

Board Member 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.

BOARD DISCUSSION:

The Board and Town Attorney Mancuso discussed supporting information that is required when making a Board motion whether it is for approval or denial.

The Board did not receive any documentation as to the type of equipment that Mr. Turner anticipates storing outside. Attorney Mancuso stated that Mr. Bonsignore would be contacting him and could request any additional submissions on behalf of the Zoning Board. Attorney Mancuso reminded the Board that they do have the discretion to grant, deny or grant a lesser variance than what is being requested.

The Board further discussed parcel sizes and use variances.

With no further business, a motion was made by Chairman Van Lare and agreed by common consent that the meeting be adjourned at 8:20 PM.

Respectfully Submitted,

Meribeth Palmer
Deputy Town Clerk