

**RUSH ZONING BOARD OF APPEALS  
REGULAR MEETING  
MINUTES OF SEPTEMBER 12, 2013**

A regular meeting of the Rush Zoning Board of Appeals was held on September 12, 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  
Douglas Dumbleton, Resident  
Randall Lewis, Resident  
Sharyl Lewis, Resident  
Bradley Malcolm, Resident  
Kimberly Malcolm, Resident  
Kathryn Hankins, Resident

**PUBLIC HEARING:**

**Application 2013-12Z** by Douglas Dumbleton requesting a side setback variance for a picnic pavilion. The proposed location does not comply with 120-19 of the Rush Town Code. Property is located at 801 Fishell Road and zoned R-30.

Mr. Dumbleton explained that he would like to build an open sided picnic pavilion over an existing concrete slab. The pre-existing slab was previously a basketball court. Mr. Dumbleton submitted a letter from neighbor Lee Johnson stating that he has no objection to Mr. Dumbleton's proposal. Mr. Dumbleton is requesting to place the pavilion 10 feet from the property line.

Chairman Van Lare entered into the record all correspondence; Monroe County Department of Planning and Development ruled the application a local matter. The Rush Conservation Board asked what the concrete slab was previously used for, which was answered by Mr. Dumbleton above. The Rush Board of Fire Commissioners had no concerns regarding the application. Residents Carol and David Wahl submitted a written statement indicating that they have no objection to the proposed application.

With no further questions regarding the application, Board Member Corbin made a motion to close the Public Hearing for application 2013-12Z by Douglas Dumbleton.

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.

**Application 2013-13Z** by Randall and Sharyl Lewis 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 2461 Pinnacle Road and zoned R-30.

Mr. Lewis explained that they would like to place the shed in the rear of the property approximately 15 to 16 feet from the property line. Much of the property behind the home is on a decline and the proposed location is a flatter area.

Chairman Van Lare entered into the record all correspondence; Monroe County Department of Planning and Development ruled the application a local matter. The Rush Board of Fire Commissioners had no concerns regarding the above application. The Rush Conservation Board asked what would happen once the vacant property in the rear sells.

Mr. Lewis explained that the approved dwelling site for vacant lot behind him places the home about 300 feet away from his property and there is a creek that runs directly behind his property. Mr. Lewis stated that the property that is currently for sale is adjacent to their lot.

With no further questions regarding the application, Board Member Corbin made a motion to close the Public Hearing for application 2013-13Z by Randall and Sharyl Lewis.

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.

**WORKSHOP:**

**Application 2013-14Z** by Bradley and Kimberly Malcolm 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 800 Phelps Road and zoned R-30.

Mr. Malcolm explained to the Board that his variance request is for an existing shed that he installed approximately 5 feet from the property line. There is also an old shed from the previous owners that he plans on taking down. Mr. Malcolm explained that placing the shed 25 feet from the property line would put the shed in the middle of his back yard. There is also a pool located behind the house that was existing at the time he purchased the property. The septic is located in the front of the house.

Mr. Malcolm was asked by Chairman Van Lare to locate and mark the property line to assist with measuring when one of the Zoning Board members comes to view the property. The Board also requested that Mr. Malcolm add to his map all adjoining property owners and the distances to their structures.

Mr. Malcolm was informed that he will be contacted by a Zoning Board member to make arrangements to view the property.

Public Hearing for Mr. Malcolm's application will be set for October 10, 2013.

#### **BOARD DISCUSSION:**

The Zoning Board was asked for comments regarding the request to rezone the property located at 7262 West Henrietta Road. Board Member Weiler stated that although the property is zoned residential the property is not suitable for homes especially with the close proximity of NYS Route 15 and Interstate 390. Board Member Weiler state that this would be an acceptable use. Chairman Van Lare noted that variances will be needed should the Town Board approve the rezoning. Chairman Van Lare stated to the zoning Board members that any individual comments could also be submitted directly to the Town Board.

Councilman Woolaver had no report.

Code Enforcement Officer Kusse had no report.

#### **APPLICATION ASSIGNMENTS:**

**Application 2013-14Z** by Bradley and Kimberly Malcolm has been assigned to Board Members Weiler and Koppers.

#### **DECISIONS:**

Board Member Pruden made a motion **WHEREAS**, this Board has examined Application 2013-12Z submitted by Douglas Dumbleton as property owner of 801 Fishell Road, located in an R-30 district, and by Roger Dolliver as contractor requesting a side setback variance for a picnic pavilion to be constructed over an unutilized concrete pad, formerly a basketball court, to the east of the existing residence, and maps and other materials which were filed with the application; and

**WHEREAS**, the application is for a side setback variance only, now therefore,

**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 under New York Code of Rules and Regulations, in listing Type II Actions, includes all variances for relief from granting of individual setback and lot line variances.

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.

**WHEREAS**, Application 2013-12Z was submitted by Douglas Dumbleton as property owner for property located at 801 Fishell Road, Rush, New York, and Roger Dolliver as contractor, requesting a variance from a side setback requirement for structures of 25 feet as set forth in the Rush Town Code, Chapter 120-19, as described in the maps and diagrams submitted with the application; and

**WHEREAS**, the property owner wishes to re-purpose a pre-existing concrete pad which was formerly a basketball court and currently serves no functional or aesthetic purpose on the property; 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 therefore,

**BE IT RESOLVED**, that Application 2013-12Z is granted as requested in the plans submitted with the application. The proposed picnic pavilion as identified in the plans shall be placed no closer than 8 feet from the property line to the east of 801 Fishell Road.

The following conditions apply:

1. No work is to commence until a building permit is obtained from the Town of Rush;
2. The construction of the proposed picnic pavilion is to be completed within one year of the approval of the application;

3. The proposed picnic pavilion is for the sole purpose of re-purposing a pre-existing concrete pad which was formerly a basketball court;
4. The proposed picnic pavilion will consist of a roof structure over the concrete pad with lattice on the sides to provide privacy. Other than the lattice on two sides of the picnic pavilion, there will be no walls.

The reasons for this action are:

1. The 8 foot variance will allow the applicant to build a picnic pavilion onto an unused concrete pad;
2. The proposed picnic pavilion will present no impediment to the enjoyment of the neighboring properties to the east and west;
3. Neighbors have voiced no objection to the placement of the proposed picnic pavilion on the concrete pad; and
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.

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.

Board Member Koppers made a motion **WHEREAS**, this Board has examined Application 2013-13Z, submitted by Randall and Sharyl Lewis, of 2461 Pinnacle Road, Rush, New York, located in a R-30 district, requesting a side setback variance for a proposed 12' x 20' detached storage shed located on the northwest 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."

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 2013-13Z was submitted by Randall and Sharyl Lewis, of 2461 Pinnacle Road, Rush, New York, requesting a variance from the side setback requirement for structures of at least 25 feet as set forth in the Rush Town Code, 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, now therefore

**BE IT RESOLVED**, that Application 2013-13Z be granted as submitted with the application, subject to the following conditions:

1. The northwest corner of the detached storage shed, as proposed in the plan, shall be placed no closer than 10 feet from the northwest property line;
2. No work is to be commenced or placement of the storage shed, until a Building Permit is obtained from the Town of Rush; and
3. 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 and the steep decline in 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; and
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.

RUSH ZONING BOARD OF APPEALS  
SEPTEMBER 12, 2013

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

**Approval of Minutes:** August 6, 2013

Board Member Weiler made a motion to approve the Minutes of August 6, 2013 as written.

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.

With no further business, a motion was made by Don Van Lare and agreed by common consent that the meeting be adjourned at 7:35 PM.

Respectfully Submitted,

Meribeth Palmer  
Deputy Town Clerk