

**RUSH ZONING BOARD OF APPEALS
REGULAR MEETING
MINUTES OF OCTOBER 10, 2013**

A regular meeting of the Rush Zoning Board of Appeals was held on October 10, 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: Dan Woolaver, Town Board Liaison
Bradley Malcolm, Resident
Kimberly Malcolm, Resident
Rita McCarthy, Resident
Marilyn Chase, Resident
Selden Chase, Resident
Bruce Will, Attendee

PUBLIC HEARING:

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 submitted three letters from neighbors stating no objections to his proposed application in addition to map a showing the house numbers and locations of the adjoining properties.

Chairman Van Lare stated for the record that the variance request is for a pre-existing shed that is 1 foot from the property line. Mr. Malcolm is requesting to move the shed 5 feet from the property line.

Chairman Van Lare explained to Mr. Malcolm that the Board cannot approve anything that close to the property line when there is nothing keeping him from moving it further to comply with the Rush Zoning Code. The Chairman discussed alternatives including moving the shed 25 feet east of the property line, doing nothing which would likely result in an appearance ticket and the last alternative would be to submit another application requesting shed placement no closer than 10 -15 feet from the property line.

Mr. Malcolm stated that it can be moved, however, he does not want to move it 10-15 feet. Mr. Malcolm also stated that the current location is not visible from the street.

Again, the Chairman explained that the Board is required to give the minimum allowable variance necessary. The Board cannot give the maximum. Approving an application like

this would set an undesirable precedence for future appeals. The Board further discussed possible compromises hoping to find a solution for the placement of Mr. Malcolm's shed.

The Board is willing to waive the workshop and go directly to a public hearing next month if Mr. Malcolm submits a new application requesting a variance to place the shed no closer than 10 feet from the property line by October 15, 2013.

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. The Rush Fire Commissioners have no concerns regarding the above said application.

The Board discussed application fees for re-submittal.

With no further comments Board Member Corbin made a motion to close the public hearing.

Board Member Koppers 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 2013-15Z by Selden and Marilyn Chase requesting a front setback variance for an addition to the single family residence located at 20 Gilbert Mills-Wilkinson Road. The proposed addition does not comply with 120-18 of the Rush Town Code. Property is located in an R-30 zoning district.

Mr. Chase explained that they would like to build an addition to accommodate a first floor bathroom, walk-in shower and an area for a washer/dryer. They are also planning an entrance way for a 3 car garage. Mr. Will contactor for Mr. and Mrs. Chase, explained that the current unheated sunroom will be removed and replaced by the addition. The front of the proposed garage will be in line with the front of the house. Mr. Will and the Board further discussed the setbacks from centerline. It was noted that the road is not parallel with the dwelling and the setbacks from centerline will vary from the north corner of the dwelling to the south corner of the dwelling. The Board has requested that Mr. Chase and Mr. Will submit another map showing the entire dwelling with setbacks from centerline for accuracy.

Public Hearing for Application 2013-15Z will be set for November 14, 2013.

REPORTS:

Councilman Woolaver had no report.

APPLICATION ASSIGNMENTS:

Application 2013-15Z by Selden and Marilyn Chase has been assigned to Board Members Corbin and Pruden.

DECISIONS:

Robert Weiler made a motion **WHEREAS**, since this application concerns an existing property with no proposed changes SEQR processing is not required.

WHEREAS, Application 2013-14Z was submitted by Bradley B. and Kimberly I. Malcolm for property at 800 Phelps Road, requesting a variance from a side setback requirement for structures of twenty five (25) feet as set forth in the Rush Town Code Chapter 120-19, 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 denied as requested in the plans submitted with the application. The existing storage shed as identified in the plan is currently placed at one (1) Foot from the property line and would require a 24 foot variance from the neighboring property. There is a second shed which is 7 feet from the same property line.

The following conditions apply:

1. The applicant has indicated that the second shed which is 7 feet from the property line will be removed. A proposed date will be required for this action or this shed will be subject to the same denial.

The reasons for this action are:

1. Approval would be a detriment to the adjacent property owner.
2. The applicant could pursue an alternative course that would not require a variance.

3. The difficulty is self-created. The applicant completed the installation of this shed without a building permit or a variance approval.

Board discussion on the Motion: It was determined by the Zoning Board that conditions could not be placed on a denial motion.

Chairman Van Lare made a motion to remove the above said condition #1.

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 Corbin seconded the amended application 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: September 12, 2013

Chairman Van Lare made a motion to approve the Minutes of September 12, 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