

**RUSH ZONING BOARD OF APPEALS
REGULAR MEETING
MINUTES OF NOVEMBER 13, 2014**

A regular meeting of the Rush Zoning Board of Appeals was held on November 13, 2014 at the Rush Town Hall, 5977 East Henrietta Road, and was called to order at 7:00 PM.

PRESENT: Amber Corbin, Chairperson
Garry Koppers, Vice Chairperson
David Flass
Lee Hetrick
Jillian Moore
Shivaun Featherman, Deputy Town Clerk

OTHERS: Dan Woolaver, Town Board Liaison
Karen Hopkins, Realtor
Francis Rapport, Realtor
George Conboy, Attendee
Charles Steinman, Esq.
Richard Updaw, Resident
Ronald Pearl, Resident
Gerry Kusse, Code Enforcement Officer

Chairperson Corbin welcomed all and called the November Zoning Board of Appeals meeting to order at 7:00 PM.

Chairperson Corbin welcomed new Zoning Board Member Jillian Moore and thanked her for her commitment to the Rush Zoning Board of Appeals and to the Town of Rush.

WORKSHOP:

Application 2014-08Z by Richard Updaw requesting a use variance to screen top soil for retail sale. Property is located at 7445 West Henrietta Road and is zoned Residential-30.

Mr. Updaw explained that his property at 7445 West Henrietta Road is a working farm within the agricultural district. There are 3.5 acres in the southeast corner that are unusable as farmland due to its use as a mined out pit (roughly 25' deep) during the construction of the bridge for Route 15 in the 1930's.

For the past 4 years, Mr. Updaw has had an agreement with Riccelli Enterprises where they bring topsoil to his property to store, screen and transport to different job locations. In exchange, Riccelli Enterprises leaves enough topsoil to bring that area up to grade, which will eventually reclaim it as tillable farmland. To date, that area has been filled 6'. Mr. Updaw also uses the topsoil to bring other low lying areas on his farm up to grade.

Mr. Updaw is due to renew his contract with Riccelli Enterprises in May of 2015, and Code Enforcement Officer Kusse advised Mr. Updaw to submit an application for a use variance in order to continue the operation. Mr. Updaw provided a copy of his contract with Riccelli Enterprises to the Board. Mr. Updaw stated that the hours of topsoil operations are from 7:00 am to 6:00 pm Monday through Friday, 7:00 am to 12:00 pm Saturdays, with no work being conducted on Sundays.

Chairperson Corbin asked Mr. Updaw if he has a timeframe of when his farmland will be brought back to tillable land and Riccelli Enterprises will no longer need to use his land. Mr. Updaw stated that it has been a good working operation and he would like to continue the agreement, even after the farmland is brought back up to grade. Mr. Updaw would keep the topsoil off to the side and still provide Riccelli Enterprises an area to work. Mr. Updaw asked if there is a time limit on a use variance. Chairperson Corbin stated that it is at the discretion of the Zoning Board.

Chairperson Corbin advised Mr. Updaw that a use variance is one of the most difficult to approve as the applicant must satisfy all four requirements listed on the application. Chairperson Corbin read through each requirement and pointed out the examples listed for reference. The Board is looking for evidence to rule on to allow a use that is not permitted in a residential zone. For instance, Mr. Updaw providing a copy of his contract with Riccelli Enterprises is an example of financial evidence.

Mr. Updaw stated that he has used the topsoil from Riccelli Enterprises for personal use, however, if the use permit is granted, he would like to sell some of the topsoil from his property, stating that it would be a source of income. Chairperson Corbin informed the applicant that the Zoning Board will be ruling on the use of the property to screen topsoil, as the application states. However, the applicant can meet with Code Enforcement Officer Kusse to discuss selling topsoil.

Chairperson Corbin gave the applicant the short environmental assessment form to complete and submit to Deputy Town Clerk Featherman.

Chairperson Corbin informed the applicant that before the Public Hearing date, a Zoning Board Member will be contacting him to schedule a time to visit the property.

Application 2014-09Z by Ronald Pearl requesting an area variance to permit an existing accessory building on land that does not include a primary residential dwelling. The area variance is required for a proposed subdivision and site plan for property located at 500 Woodruff Road. Property is zoned Residential-30.

Mr. Pearl appeared with realtors Francis Rapport and Karen Hopkins, potential buyer George Conboy, and Attorney Charles Steinman and explained to the Board that he has had his property for sale for the past 4 years. His property has a house with a 2 car attached garage, a 3 car detached garage, pole barn and horse paddocks. There are 2 driveways on the property, one for the house and one for the pole barn. He has not been able to find a buyer for the whole property, however, he currently has two potential buyers; one for the house and another for the barn.

Chairperson Corbin stated it has been presented to the Board by the Town Attorney that an area variance is not what is needed and read into the record what Town Attorney Mancuso advised:

“According to the area variance application, the property is located in the R-30 Residential District and the proposed use of the barn will be for storage. That use, however, does not fall within the permitted uses allowable under Section 120-8 of the Town Code governing permitted uses in the R-30 Residential District. Further, Section 120-8(C) provides that all uses not specifically permitted. . . shall be prohibited in R-30. Thus, the use of a principle structure (here, the barn) solely for storage appears to be prohibited in an R-30 Residential District. However, a use variance is appropriate under the circumstances because the applicant is requesting the permission to use land in a way that is prohibited by local zoning; to use the property solely for storage where such use is prohibited in the R-30 Residential District. Since the applicant has already applied for a variance, I would recommend that he re-submit a use variance application utilizing the same application number (2014-09Z) without the payment of an additional fee. The Zoning Board of Appeals would then have to determine whether a use variance to permit the use of a building for storage as its principle use should be permitted in an R-30 Residential District.”

Chairperson Corbin provided Mr. Pearl with a use variance application and the short environmental assessment form to complete and submit to Deputy Town Clerk Featherman. Chairperson Corbin explained the four requirements listed on the application that must be satisfied and further explained that the Board will need evidence to rule on. Documentation from the realtor to substantiate difficulty selling the property can be used as evidence. The Public Hearing date will remain December 11, 2014.

Chairperson Corbin informed the applicant that before the Public Hearing date, a Zoning Board Member will be contacting him to schedule a time to visit the property.

APPROVAL OF MINUTES:

Chairperson Corbin made a motion to approve the Minutes of July 10, 2014 as written.

Vice Chairperson Koppers seconded the motion and the Board Members polled.

Roll:	Lee Hetrick	aye	
	David Flass	aye	
	Jillian Moore	abstained	
	Garry Koppers	aye	
	Amber Corbin	aye	carried.

ZONING BOARD OF APPEALS
NOVEMBER 13, 2014

APPLICATION ASSIGNMENTS:

Chairperson Corbin and Board Member Flass are assigned Application 2014-08Z, and Vice Chairperson Koppers and Board Member Hetrick are assigned Application 2014-09Z.

With no further business, a motion was made by Chairperson Corbin and agreed by common consent that the meeting be adjourned at 7:56 PM.

Respectfully Submitted,

Shivaun Featherman
Deputy Town Clerk