

**RUSH ZONING BOARD OF APPEALS  
REGULAR MEETING  
MINUTES OF SEPTEMBER 10, 2015**

A regular meeting of the Rush Zoning Board of Appeals was held on September 10, 2015 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, Member  
Lee Hetrick, Member  
Susan Swanton, Member  
Shivaun Featherman, Deputy Town Clerk

**OTHERS:** Dan Woolaver, Town Board Liaison  
Charlie & Patricia Hunt, Residents  
Karl Holtz, Resident  
Steven Tomanovich, Resident

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

**PUBLIC HEARING:**

**Application 2015-03Z** by Steven Tomanovich requesting two front setback variances and a side setback variance for a proposed garage. The proposed location does not comply with 120-18 and 120-19 of the Rush Town Code. Property is located at 6101 East Henrietta Road and is zoned commercial.

Mr. Tomanovich submitted a letter to the Board written and signed by him dated September 8, 2015 regarding the clarification of his variance. Chairman Corbin read the letter aloud and entered it into the record:

*"I would like to request a front setback variance for a two-car garage since the property has two fronts. I would also like to request a front setback variance for the two decks that were constructed earlier this year. These are part of Application 2015-03Z."*

Mr. Tomanovich explained there is an existing one-car garage that faces East Henrietta Road. The property has changed over the years, and the driveway has been relocated and the entrance is now on Rush West Rush Road. Mr. Tomanovich would like to demolish the existing garage and build a two-car garage that faces the Rush West Rush Road entrance. As the house has gone from a single family dwelling to a two-family dwelling, the bigger garage is needed.

Mr. Tomanovich stated that he spoke with his neighbors Don Knab, Steve Griffin and Therese Tomanovich and they have no problem with the application. Chairperson Corbin asked if Mr. Tomanovich has letters from the neighbors stating they have no concerns. Mr.

Tomanovich replied that he does not. Chairperson Corbin advised Mr. Tomanovich that as there is nothing in writing from the neighbors, only verbal, it cannot be part of the record.

Chairperson Corbin stated that she and Board Member Hetrick visited the property and took measurements of distances from the neighbors. In addition, Chairperson Corbin stated that she and Board Member Hetrick asked Mr. Tomanovich that as the existing garage is to be demolished, would he be willing to move the proposed garage back? Mr. Tomanovich stated the location he is proposing is the optimal location to maximize the back yard and have enough room for a two car garage. Chairperson Corbin stated she wanted the other Board Members to be aware that other locations were considered.

Chairperson Corbin read into the record that the Monroe County Department of Planning and Development (MCDP&D) ruled the application a local matter. The Rush Board of Fire Commissioner's does not have any issues or concerns with this application, and the Rush Conservation Board does not find any aspect of the project to significantly impact the environment. Chairperson Corbin also entered into the record a copy of Mr. Tomanovich's application for a building permit for his decks; application # 15-0031 dated May 6, 2015, attached with a survey map and a Certificate of Compliance.

With no further comments, Board Member Hetrick made a Motion to close the public hearing. Vice Chairman Koppers seconded the Motion, and the Board polled:

Roll:	Lee Hetrick	aye	
	Garry Koppers	aye	
	Susan Swanton	aye	
	David Flass	aye	
	Amber Corbin	aye	carried.

## **WORKSHOP:**

**Application 2015-02Z** by Charlie & Patricia Hunt requesting a front setback variance for a garage addition to the existing garage located at 20 Delia Trail. The proposed location does not comply with 120-18 of the Rush Town Code. Property is located in an R-30 zoning district.

Mr. Hunt explained they would like to add an addition to their existing garage. Mr. Hunt submitted a sketch of the property. Chairperson Corbin inquired as to the number of bedrooms and bathrooms the home currently has. Mr. Hunt stated their home has 3 bedrooms and 2 ½ bathrooms. Chairperson Corbin asked that by adding a master bedroom, will they be adding a bathroom as well? Mr. Hunt replied they will be adding a shower to the ½ bathroom. Chairperson Corbin advised the applicants that the Board will need verification that the septic system can support a 4 bedroom, 3 full bathroom house and added that Code Enforcement Officer (CEO) Gerry Kusse can direct them to the proper authority to contact for the verification. Chairperson Corbin explained that the Board will need that verified before the public hearing on October 8, 2015. The Board will need that evidence before them and cannot consider a variance if the current septic

system can't support their proposed plans. Board Member Hetrick explained to the applicants that the Monroe County Health Department determines the appropriate septic system by the number of bedrooms, not bathrooms, in a home.

Chairperson Corbin noted that the approximate distances of where the proposed addition will be to their neighbor's homes next to him have the distances noted on the sketch, but the Board will need the distance of the home across the street. Mr. Hunt stated it is approximately 180'.

Board Member Hetrick stated that according to the measurements on the map, the applicants may need a side setback variance. The existing garage is 30' off the property line, which is 22' wide. With the addition, it will be 28' wide, making it a difference of 6'. 6' from 30' is 24'. The setback is 25'. Mr. Hunt asked if the side setback can be included with this application, and Chairperson Corbin stated yes; Mr. Hunt will need to write a letter to the Zoning Board that he would like to also ask for a side setback variance, similar to the clarification letter that Mr. Tomanovich submitted to the Board at his public hearing tonight.

Chairperson Corbin explained to Mr. and Mrs. Hunt that the public hearing for this application is scheduled for October 8, 2015 at 7:00 pm. Before the public hearing, two Zoning Board Members will contact them to schedule a time to visit their property and take measurements.

**Application 2015-04Z** by Karl Holtz 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 6841 East River Road and is zoned Residential-30.

Mr. Holtz explained to the Board that he would to install a shed to store landscaping equipment and supplied a picture of the 12' x 10' shed to the Board, along with pictures of the location of the shed in relation to the property lines. The shed will be hidden by landscaping and will not be seen from the road. Mr. Holtz stated he installed the pad for the shed before realizing that he may need a building permit, and upon consulting with CEO Kusse, it was determined that Mr. Holtz would need to apply for a variance.

Chairperson Corbin noted that the proposed shed would be only 3' from the property line to the neighbor to the east of Mr. Holtz's property and stated that is very close; has he considered other locations? Mr. Holtz stated the way that his property is landscaped, the proposed location is the most viable location.

Vice Chairperson Koppers stated that a letter from the owner of the property next door stating they have no concerns would be helpful. Board Member Hetrick added it would be helpful to get letters from all 3 neighbors.

Chairperson Corbin advised Mr. Holtz that they will need the approximate distances from the closest corner from where the shed will be to the approximate closest corner to his neighbors buildings.

Chairperson Corbin explained to Mr. Holtz that the public hearing for this application is scheduled for October 8, 2015 at 7:00 pm. Before the public hearing, two Zoning Board Members will contact him to schedule a time to visit his property and take measurements.

**DECISIONS:**

Chairperson Corbin made a Motion **WHEREAS**, this Board has examined Application 2015-03Z, submitted by Steven Tomanovich located at 6101 East Henrietta Road, located in a Commercial Zoning District, requesting two (2) front setback variances for two existing decks, on the west and north sides of the existing home, and two front setback variances for a proposed detached two-car garage on the west side of property, and a side set back variance, and the maps, and diagrams and other materials were submitted with the application; and

**WHEREAS**, the application is solely for an Area Variance; and

**WHEREAS**, Application 2015-03Z was submitted by Steven Tomanovich, of 6101 East Henrietta Road, requesting a variance from a 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 with the application, and four (4) front setback variance requirements for structures of at least one hundred forty (140') 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 this Board determines that this is a Type II SEQR Action and, therefore, not subject to further review 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";

Vice Chairman Koppers seconded the Motion and the Board polled:

Roll: Lee Hetrick	aye
Garry Koppers	aye
Susan Swanton	abstained
David Flass	aye
Amber Corbin	aye carried.

**BE IT FURTHER RESOLVED**, that Application 2015-03Z request for two front setback variances, for the sole purpose of the two existing decks, as described in the Town of Rush Application for Building Permit and Certificate of Compliance No. 15-0031, be granted as requested in the plans submitted with this application.

The reasons for this action are:

1. The home is currently seventy (70') feet from the center line of East Henrietta Road and sixty-five (65') feet from the center line of Rush West Rush Road, and it will not allow for the One hundred forty (140') foot minimum front setbacks.
2. The placement of the existing deck on the west side of house ( 10'x16') is sixty-eight feet (68') from the center line of Rush-West Rush Road and one hundred-sixteen feet (116') from the center line of East Henrietta Road, and the existing deck on the north side of house ( 12'x16') is ninety-four feet (94') from the center line of Rush-West Rush Road, and ninety-seven(97') from the center line of East Henrietta Road, and 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;  
and

**BE IT FURTHER RESOLVED**, that Application 2015-03Z request for two front setbacks and one side setback for the sole purpose of constructing a detached two-car garage (24'x24'), be denied, as requested in the plans submitted with this application.

The reasons for this action are:

1. The proposed detached two car garage would have been placed four feet (4') from the west property line. Owner constructed the two existing decks he is requesting a variance for earlier this year. The proposed 2 car garage could have been built further from property line if decks where not constructed in their present location, which would have made the parcel more in compliance with current zoning.

2. The proposed detached two car garage would have been placed seventy-eight feet (78') from the center line of Rush West Rush Road. Currently there is an existing garage in the northwest corner of property that owner plans to demolish. Owner is seeking a variance for a 4 foot (4') setback and the minimum zoning requirement is 25 feet (25'). This, the variance sought represents an 84% deviation from the requirement. This is also a further deviation from the existing garage, which currently has a side setback of 8'6".
3. The benefit can also be achieved by an alternative method. For example, the proposed garage could be moved close to the location of the existing garage, which would increase the side and front setbacks and would make the parcel more in compliance with the current zoning.
4. Alleged difficulty was self-created. Owner has been granted other variances for this property since taking title. Owner was aware of the zoning restrictions for this property when it was purchased by Owner.

**BE IT FURTHER RESOLVED**, that the Applicant, upon taking title to 6101 East Henrietta Road, agreed to all variances that were granted for this property, including condition #2 of Application 2012-04Z providing that "[t]he driveway and parking area is to be made of asphalt, concrete or gravel of suitable depth, and condition three (3) the parking area is to be screened from the adjacent property by evergreen plantings. The Applicant submitted a letter to the Rush Zoning Board of Appeals on February 17, 2014, agreeing to all original variances. Applicant will have six months (6) from the date of this resolution to comply with the conditions of the variances for 6101 East Henrietta Road.

Board Member Hetrick seconded the Motion and the Board polled:

Roll:	Lee Hetrick	aye	
	Garry Koppers	aye	
	Susan Swanton	abstained	
	David Flass	aye	
	Amber Corbin	aye	carried.

**APPROVAL OF MINUTES:**

Vice Chairman Koppers made a Motion to approve the Minutes of August 13, 2015 as written.

Board Member Flass seconded the Motion and the Board Members polled.

ZONING BOARD OF APPEALS  
SEPTEMBER 10, 2015

Roll: Lee Hetrick            aye  
      Garry Koppers        aye  
      Susan Swanton        abstained  
      David Flass           aye  
      Amber Corbin         aye    carried.

Board Member Swanton abstained as she was not present at the August 13, 2015 Zoning Board meeting.

**APPLICATION ASSIGNMENTS:**

Chairperson Corbin and Board Member Hetrick are assigned Application 2015-04Z.

Vice Chairperson Koppers and Board Member Flass are assigned Application 2015-02Z.

With no further business, a Motion was made by Chairperson Corbin and agreed by common consent that the meeting be adjourned at 7:55 PM.

Respectfully Submitted,

Shivaun Featherman  
Deputy Town Clerk