

**RUSH ZONING BOARD OF APPEALS
REGULAR MEETING
MINUTES OF JULY 14, 2016**

A regular meeting of the Rush Zoning Board of Appeals was held on July 14, 2016 at the Rush Town Hall, 5977 East Henrietta Road, and was called to order at 7:00 PM.

PRESENT: Amber Corbin, Chairperson
David Flass
Lee Hetrick
Susan Swanton
Shivaun Featherman, Deputy Town Clerk

EXCUSED: Garry Koppers, Vice Chairperson

OTHERS: Beth Markell, Resident
Michael Eadie, Resident
Phil D'Alessandro, Building Inspector
Dan Woolaver, Town Board Liaison
Brian Eadie, Resident
Mark Halladay, Resident
Joseph Stasiw, Resident
Kristopher Stasiw, Resident

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

PUBLIC HEARINGS:

Application 2016-02Z by Seth and Ruth Hubbard requesting a side setback variance and a rear setback variance for an existing shed. The location does not comply with 120-19 of the Rush Town Code. Property is located at 1913 Middle Road and is zoned Residential-30.

The new property owner of 1913 Middle Road, Mark Halladay, was present. Chairperson Corbin stated that the Board is in receipt of an email dated June 7, 2016 from Mark & Polly Halladay and read it into the record:

"We are purchasing the property located at 1913 Middle Rd, Rush, NY 14543, and understand that the present owners (Hubbard) have applied for an area variance for a shed located on the property, and will present their request June 9. We hope to close on the property before the next Zoning Board of Appeals meeting on July 14, and are planning to attend that meeting to follow up in good faith on the request by the present owners. Thank you for your consideration!"

Chairperson Corbin stated that in addition, the Board members are in receipt of an email from Mr. Hubbard dated July 14, 2016 and read it into the record:

"Please pass along this deed for the meeting tonight. Ruth and I consent to Mr. and Mrs. Halladay, the new owners, continuing with the variance application that was submitted under our name."

Chairperson Corbin submitted the warranty deed into the record which shows the transfer of title to the Halladays.

As Mr. Halladay was not at the June Zoning Board meeting, Chairperson Corbin explained to him that the Hubbards submitted an Area Variance Application for the shed and had submitted shed pictures and a survey map from 2005. Mr. Halladay submitted an updated map along with measurements that he had taken from the fence to the shed, which was 9'4".

Chairperson Corbin explained that she and Board Member Flass had visited the property after the June Zoning Board workshop and had measured from the shed to the west property line and it was 8'.

Board Member Swanton thanked Mr. Halladay for requesting a Certificate of Compliance for the shed for the house closing.

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 Commissioners 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

With no further comments or questions, Board Member Hetrick made a Motion to close the public hearing. Chairperson Corbin seconded the Motion, and the Board polled:

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|-------|---------------|-----|----------|
| Roll: | Lee Hetrick | aye | |
| | David Flass | aye | |
| | Susan Swanton | aye | |
| | Amber Corbin | aye | carried. |

Application 2016-03Z by Karen Dell requesting a front setback variance for a proposed addition to an existing home. The proposed location does not comply with 120-18 of the Rush Town Code. Property is located at 126 Phelps Road and is zoned Residential-30.

Elisabeth Markell appeared and explained that they would like to put an addition on the front of their home that is approximately 35' x 12' to expand their kitchen, and are requesting a front setback variance as the addition is closer to the center of the road than the Town Code allows. There are no other locations on their property that are feasible to put the addition.

Chairperson Corbin read into the record that the Rush Board of Fire Commissioners 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 entered into the record 4 signed letters that Ms. Markell submitted from her neighbors stating that they do not intend to contest the building of this addition.

Chairperson Corbin stated that MCDP&D submitted 2 comments regarding the proposed addition. According to the New York State Department of Environmental Conservation (NYS DEC) Freshwater Wetland Map, this site may contain a portion of a portion of Wetland RU-13. The Board suggested the applicants contact the DEC as a letter dated July 8, 2016 from the DEC to Monroe County stated "your project is near mapped NYS Freshwater Wetland RU-13. The actual wetland boundary must be field verified by a qualified wetland professional. A NYS Freshwater Wetlands permit is required for any physical disturbance within the designed wetland or within the 100 foot adjacent area of the wetland."

Ms. Markell contacted biologist Robert Call with the Division of Environmental Permits who stated that because of how this particular map was from satellite and from aerial photography, they generally send another biologist out to measure, and advised Ms. Markell to contact Scott Jones with the NYSDEC to see if that is actually the case. Mr. Jones will send an official letter stating that they do not have jurisdiction for the proposed site of the addition. It is outside of the 100' barrier referenced by the County.

Chairperson Corbin read into the record a portion of a letter from biologist Robert Call to Monroe County with a review from the Biotic Communities / Endangered and Threatened Species of Flora and Fauna Division:

"We have reviewed the available information in the NYS Natural Heritage Program databases for known occurrences of federally-listed or proposed endangered or threatened species; state-listed endangered, threatened or rare animal and plant species; significant natural communities; and other significant habitats. While there are several plant species identified within the vicinity of the property, they are not expected to be present in the vicinity of the proposed home addition."

Chairperson Corbin continued to read from the letter the review from the Historic, Architectural, Archeological and Cultures Resources Division:

"A review of the NYS Archaeological Site Map indicates that the project site is not located within an archaeologically sensitive area."

The second comment states that Monroe County wants it to be known that according to their review of recent aerial photographs and the agricultural district maps, this project occurs on or within 500 feet of land in agricultural production in Monroe County and they suggest an Agricultural Data Statement be completed. Chairperson Corbin noted that Ms. Markell has completed the Agricultural Data Statement and that Deputy Town Clerk Featherman has submitted it to Monroe County.

Chairperson Corbin stated that Monroe County also sent Application 2016-03Z to the Monroe County Development Review Committee that generated a project review report dated July 5, 2016, and it reads that they would like monumentation to be checked by the County Surveyor to confirm that no work will occur in the right-of-way. Chairperson Corbin added that the Monroe County Department of Health reviewed the project and has no comment, and Application 2016-03Z was sent to other agencies that have had no comment.

Chairperson Corbin stated that in regards to the monumentation, there were many emails between multiple parties and the town, and Chairperson Corbin read them into the record, showing that they have satisfied what the County has requested.

Chairperson Corbin thanked Ms. Markell for her thorough application and for following through with Monroe County's recommendations.

With no further comments or questions, Board Member Hetrick made a Motion to close the public hearing. Chairperson Corbin seconded the Motion, and the Board polled:

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

WORKSHOP:

Application 2016-04Z by Michael Eadie requesting a side setback variance for a proposed shed. The proposed location does not comply with 120-19 of the Rush Town Code. Property is located at 7476 West Henrietta Road and is zoned Commercial.

Mr. Eadie explained that he would like to install a 12' x 20' storage shed and pointed out on his site map the location where he would like to put it. Other locations on his property are not feasible as one location would have him driving over his septic tank and leach field to access it and he would still need to request a side variance as that location is close to his property line. The other location would be close to the front of his home and would require a side and a front variance and a lot of excavation work because of a sloping hill by his house.

Board Member Hetrick inquired about the distance of the proposed shed to the leach field. Mr. Eadie replied 10'-15'.

Chairperson Corbin advised Mr. Eadie that as his property is zoned Commercial, he will need to add a front setback variance request to his Application as the Code states that the setback from the centerline of the road is 140' in a Commercial zone.

Chairperson Corbin explained to the applicant that before the public hearing date of August 11, 2016, two Zoning Board Members will contact him to schedule a time to visit

his property and take measurements. Chairperson Corbin advised the applicant that although not necessary, it would be helpful to obtain letters from his neighbors stating that they are not opposed to the proposed addition. Chairperson Corbin asked Mr. Eadie to please stake out the proposed location of his shed before the Zoning Board Members visit.

DECISIONS:

Board Member Flass made a Motion **WHEREAS**, this Board has examined Application 2016-02Z, submitted by Seth and Ruth Hubbard of 1913 Middle Road, Rush, NY, and Mark & Polly Halladay as new owners, located in a R-30 District, requesting a side setback and rear setback variances for a pre-existing, non-conforming 12 x 8' 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 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 the granting of individual setbacks and lot line variances.

Board Member Hetrick seconded the Motion, and the Board polled:

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

WHEREAS, Application 2016-02Z was submitted by Seth and Ruth Hubbard of 1913 Middle Road, Rush, NY, and Mark & Polly Halladay as new owners requesting 2 variances: a side setback requirement for structures of at least twenty-five feet (25'), and a rear setback requirement of 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 2016-02Z** be granted as submitted with the application, subject to the following conditions:

1. The pre-existing storage shed is allowed to remain no closer than eight (8') feet from the north property lot line, and no closer than sixteen feet nine inches (16'9") from the west property line.
2. Approval is dependent on the applicant obtaining the required permit from the Town of Rush within thirty (30) days of the granting of this motion.

The reasons for this action are:

1. The shed was already on the property when Seth and Ruth Hubbard purchased the property.
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.

Board Member Hetrick seconded the Motion, and the Board polled:

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

Vice Chairperson Corbin made a Motion **WHEREAS**, this Board has examined **Application 2016-03Z**, submitted by Karen Dell and Elisabeth Markell of 126 Phelps Rd, Rush, NY, located in a R-30 District, requesting a front setback variance for a proposed addition to the front of the house; 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 the granting of individual setbacks and lot line variances.

Board Member Swanton seconded the Motion, and the Board polled:

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

WHEREAS, **Application 2016-03Z** was submitted by Karen Dell and Elisabeth Markell of 126 Phelps Rd, Rush, NY, requesting a variance from a front setback requirement for

structures of at least one hundred- ten feet (110') 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 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 2016-03Z** be granted as submitted with the application, subject to the following conditions:

1. The proposed addition, as proposed in the application, shall be placed no closer than ninety-eight feet (98') from the center line of the road.
2. No work is to be commenced on the addition until a building permit is obtained from the Town of Rush.
3. The construction of this addition is to be completed within one year of the approval of this application.
4. Approval is subject to receipt of NYSDEC approval letter.

The reasons for this action are:

1. There will be no undesirable change in the character of the neighborhood.
2. There is no discernible detriment to the health, safety or welfare of the community or neighborhood that would occur by granting this variance.
3. Neighbors have no objection to the proposed addition.
4. The placement of the addition is consistent with the neighborhood and the proximity of the pre-existing buildings on the road.

Chairperson Corbin seconded the Motion, and the Board polled:

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

INFORMAL:

Joseph Stasiw to discuss constructing a three car garage with a second story in-law apartment. Property is located at 290 Stonybrook Road and is zoned Residential-30.

Joseph Stasiw and Kristopher Stasiw appeared. Joseph Stasiw explained that they would like to demolish their unattached, existing garage and construct a new 3 car garage with an in-law apartment on the second level and a workshop on the back. They would like to build a new building instead of converting the existing garage into an in-law apartment as that would require a massive renovation.

Mr. Stasiw stated that he understands that they need to request relief from Section 120-61 (C) 2 of the Town Code which states that one cannot build a new accessory apartment outside of the principle dwelling. Mr. Stasiw advised the Board that he had been to the June Planning Board meeting in June to discuss his project informally.

Board Member Hetrick explained that per the Code, one cannot have two residences on one property.

Chairperson Corbin asked Mr. Stasiw if he has tried to obtain a building permit from Building Inspector D'Alessandro and if so, was it denied? Chairperson Corbin added that residents come to the Zoning Board if they have been denied by either the Building Inspector, the Planning Board or the Code Enforcement Officer with a submitted Application to appeal the decision. Mr. Stasiw replied that he has not tried to obtain a building permit. He is present tonight to seek guidance regarding requesting a Use variance.

Chairperson Corbin explained that the Zoning Board is an appellate board and can only rule on something that one has been denied for. For example, if a resident went to the Building Inspector and he were to deny the resident a building permit based on the Code of the Town of Rush, the resident would need to fill out an Application for the type of variance that's requested. The Application has to be submitted to the Town Clerk's office by the last working day of the month in order to be added to the Zoning Board meeting agenda for the following month. The resident would go through a workshop meeting where the resident would present all the details of the proposed project, and then the following month would be the public hearing. It's a two month process.

Chairperson Corbin advised Mr. Stasiw that the use that he wants to utilize the proposed garage for is not allowed in the Code, so if he were to proceed with the proposed project, he would need to seek a Use Variance. Chairperson Corbin read aloud from the New York State Law section of Zoning and Land Use to explain the difference of an area variance request from a use variance request:

"An area variance involves a use that is allowable under the local zoning ordinance. In contrast, a use variance permits a use of land that is prohibited. Since a prohibited use,

if permitted, will result in a use of the land in a manner inconsistent with the basic character of the zone, a heavier burden is placed on the applicant for a use variance. Added requirement that the applicant prove that “the alleged hardship has not been self-created”. A use variance may be granted only when the applicant establishes “unnecessary hardship”. To prove unnecessary hardship, the applicant must demonstrate to the ZBA that for each and every permitted use under the zoning regulations for the particular district where the property is located....”

Chairperson Corbin pointed out to Mr. Stasiw the section of the Town of Rush Use Variance Application, page 2, where there are 4 requirements listed, and all 4 must be satisfied. Chairperson Corbin continued reading:

“The ZBA may grant a use variance only if each of the four criteria has been met; failure to satisfy one or more of the statutory requirements means that the variance must be denied. Conversely, where the applicant meets all the criteria, the use variance must be granted.”

Chairperson Corbin stated that it's a lot of work for the applicant to satisfy all 4 of the requirements, and provided Mr. Stasiw with a copy of the Zoning and Land Use for New York State. It guides the applicant through the 4 Use Variance requirements.

Chairperson Corbin explained to Mr. Stasiw that it is New York State Law that the Rush Zoning Board must follow.

Mr. Stasiw asked if his next move would be to apply for a building permit?

Building Inspector D'Alessandro replied that another option from seeking a variance would be to put an addition on the existing garage and make the in-law apartment and larger garage that way, and there isn't a zoning prohibition to do that. However, the problem with the existing garage is that there is no full foundation under it. The foundation is inadequate to support the change Mr. Stasiw is proposing. It may be possible to refortify the foundation. Building Inspector D'Alessandro advised Mr. Stasiw that his next step would be to consult with a professional contractor.

Building Inspector D'Alessandro advised Mr. Stasiw that if he decides to renovate the existing garage, according to the New York State Building Code, 50% of the original structure must remain to be in compliant. In other words, he cannot demolish more than 50% of the existing building.

Chairperson Corbin reiterated that the Zoning Board needs to follow New York State Use Variance requirements.

Mr. Stasiw asked that once he consults with an architect, what would be his next step? Building Inspector D'Alessandro stated he would need to review plans that the architect proposes.

Chairperson Corbin advised Mr. Stasiw to research options that's within what is allowable under the Code first. If he decides to proceed with a Use Variance Application, he would need to first consider how thoroughly he can substantiate all 4 of the requirements by New York State law.

Chairperson Corbin stated that in the Planning Board June meeting Minutes, Chairperson Felsen had asked Mr. Stasiw if he wanted interpretation of the Code by the town attorney, and Chairperson Corbin advised Mr. Stasiw to do so. It was determined that Deputy Town Clerk Featherman will contact Planning Board Chairperson Felsen to consult with the town attorney for interpretation of Section 120-61 (C) 2 of the Town Code.

APPROVAL OF MINUTES:

Chairperson Corbin made a Motion to accept the Minutes of June 9, 2016. Board Member Flass seconded the Motion, and the Board Members polled:

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

APPLICATION ASSIGNMENTS:

Chairperson Corbin and Board Member Swanton are assigned Application 2016-04Z.

REPORT OF OFFICERS:

Councilperson Woolaver stated the town attorney is still reviewing the Zoning Citizens Committee's proposed changes to the current Zoning Code.

Building Inspector D'Alessandro updated the Board regarding a new home being built on property located at 7935 West Henrietta Road. Building Inspector D'Alessandro stated that he followed up with Chairperson Corbin's thought that the home being built is closer to the road than the Code allows. Building Inspector D'Alessandro stated that one corner of the home measured only 108' feet from the centerline of the road, and another corner of the home measured only 107' from the centerline of the road. The property owner took two measurements, one was 112' from the centerline of the road, and the

other was 110' from the centerline of the road and both measurements were taken from the same corner of the home from an angle. Building Inspector D'Alessandro measured straight from the corner of the house; a straight line to the centerline of the road.

Building Inspector D'Alessandro stated that he advised the property owner to hire a land surveyor to take measurements, as the Town of Rush needs a surveyor's measurements. This way there can be no argument, and based on those measurements, the property owner can proceed with seeking a variance. The other option is for the property owner to demolish 2' to 2 ½' from the house and put a new foundation under that point and move the wall in. The property owner will still meet the requirement for the amount of square footage required for a home in a Residential-30 zone.

Building Inspector D'Alessandro advised the Board that the property owner had emailed Town Supervisor Frank asking if there is anything she can do to assist him in his non-compiling situation.

With no further business, a Motion was made by Chairperson Corbin and agreed by common consent that the meeting be adjourned at 8:45 PM.

Respectfully Submitted,

Shivaun Featherman
Deputy Town Clerk