

**RUSH ZONING BOARD OF APPEALS  
REGULAR MEETING  
MINUTES OF AUGUST 11, 2016**

A regular meeting of the Rush Zoning Board of Appeals was held on August 11, 2016 at the Rush Town Hall, 5977 East Henrietta Road, and was called to order by Chair Corbin at 7:00 PM.

**PRESENT:** Amber Corbin, Chairperson  
Garry Koppers, Vice Chairperson  
Lee Hetrick  
Susan Swanton  
Pamela Bucci, Town Clerk

**EXCUSED:** David Flass

**OTHERS:** Michael Eadie, Resident  
Phil D'Alessandro, Building Inspector  
Dan Woolaver, Town Board Liaison  
Amy Clark-Stasiw, Resident  
Joseph Stasiw, Resident  
Kristopher Stasiw, Resident

Chair Corbin welcomed all to the meeting. All were asked to sign in. Chair Corbin stated that there are agenda items that are received in the office following normally scheduled meeting and for that reason all should be aware that the agenda is subject to change.

**PUBLIC HEARINGS:**

Town Clerk Bucci read the following notice into the record.

**Application 2016-04Z** by Michael Eadie requesting a front setback variance and a side setback variance for a proposed shed. The proposed locations do not comply with §120-18 and §120-19 of the Rush Town Code. Property is located at 7476 West Henrietta Road and is zoned Commercial.

Mr. Eadie requests to erect a pre-built 12' x 20' storage shed at the side yard. It is one of the two flat locations on the property. The front location will require a side and front setback and would be approximately 40 feet to 50 feet from the road versus approximately 120 feet from the road. The other location is behind the garage, on the property line and 15 feet from the septic tank. Backyard is sloped and includes leech fields. Any farther in the center of the yard includes a slope, a curtain drain and would be too close to the septic tank.

There were no questions from the Zoning Board or audience.

Chair Corbin read the following correspondence into the record:

- Monroe County Department of Planning and Development received July 5, 2016, noted that it is a local matter.
- Monroe County Department of Transportation has no issues.
- Rush Conservation Board dated June 15, 2016, found that no aspects of the project significantly impacted the environment.
- Rush Fire District Board of Fire Commissioners dated June 30, 2016, found no issues or concerns.

With no further comments or questions, Chair Corbin made a motion to close the public hearing. Member Swanton seconded the motion, and the Board polled:

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

**WORKSHOP:**

Town Clerk Bucci read the following notices into the record.

(Mr. Capps arrived at 7:07 PM following the public hearing. Application 2016-06Z was then presented to be heard first.)

**Application 2016-06Z** by Kristopher Stasiw and Amy Clark-Stasiw. The proposed construction of a garage with in-law apartment does not comply with Rush Town Code §120-61 C.(2). Property is located at 290 Stonybrook Road, Rush and is zoned Residential-30.

Chair Corbin noted that Application 2016-06Z previously appeared informally before the Zoning Board. Request for a Use Variance was noted. Workshops do not permit input from the audience. Participation of the audience occurs during public hearings.

Joseph Stasiw reviewed the property which includes a detached two car garage with a small workspace with an above storage/game room. The building is in distressed condition. A rebuild of the building was discussed. Amy Clark-Stasiw, would like to move her mother into the building. Joseph Stasiw noted that he works in construction and understand protocol in constructing a building. They made an informal appearance before the Planning Board. A renovation of the building will be a strain in maintaining the building while refurbishing a portion of it. Both the Planning Board and Building Inspector were contacted to discuss the options. The first choice would be to demolish the building, however, a portion of the existing structure must remain pursuant to the Code.

Building Inspector D'Alessandro noted that there is a 50% rule. Once 50% of a structure has been altered it is no longer considered a pre-existing non-conforming use. The presumption in seeking a variance is based on the current Code not being adopted prior to that date – accessory structures having to be attached.

Additional discussion with all involved ensued. This building was erected prior to 2002. Because the structure was built before 2002, if it is demolished, it will no longer be considered a structure. Maintaining 50% of the building will meet the Code, however, not to include an accessory. The request is to tear the entire building down and rebuild a new one for the use of an in-law apartment. In-law apartments have to be attached unless it was built prior to the 2002 Code adoption. The driveway goes around the structure. Proposed is a 3 car garage with a man door. That section is steep and requires steps.

Chair Corbin and Building Inspector D'Alessandro previously suggested an architect review the proposal. Joseph Stasiw stated that they had not, however, Amy Clark-Stasiw had met with the Building Inspector for direction and preparation for the Zoning workshop. Three support letters from neighbors, 300 Stonybrook, 270 Stonybrook and 335 Stonybrook have been received and the short environmental assessment form documentation started. All were submitted and will be included in the public hearing record occurring in September. Kristopher Stasiw stated that other options in adjoining the house will not work. Sloping of the property, a swimming pool, the pitch of the house and the property line prohibit other options.

Amy Clark-Stasiw stated that incurring the expense of an architect at this juncture was not feasible.

Chair Corbin stated that all requirements must be satisfied in order for the Board to approve the Use Variance. All requirements that apply to NYS Law§267-b(2)(b) were read aloud and are included on the application that was discussed one at a time with the applicant.

Chair Corbin suggested submitting documentation of any financial strain, pictures of the property and if so, how a hardship has not been self-created. The more information presented the more useful it is to the Board in its decision-making process.

Amy Clark-Stasiw stated that they have owned the property for two years, did not purchase the property with the intent to create an in-law apartment and have looked into assisted and senior living as options. There are in-law properties within the neighborhood.

Chair Corbin and Vice-Chair Koppers will be contacting the applicant for a property visit.

Member Hetrick stated that when Use Variances are approved, the applicant must then appear before the Planning Board for their approval.

Chair Corbin stated that once a Use Variance is granted for an in-law apartment and the use ceases, it must not be used as a rental.

Member Hetrick suggested that Joseph Stasiw, being in the construction field, prepare an approximate cost per square foot or a remodeling cost so that the Board will have adequate perception of the construction costs involved. At this time, an architectural investment is not required.

Amy Clark-Stasiw inquired about the 50% rule. Member Hetrick responded that Building Inspector D'Alessandro is the best source for that definition.

Amy Clark-Stasiw inquired of how many use variances have been granted in Rush. Chair Corbin did not have that data available.

**Application 2016-05Z** by David Capps requesting a setback variance. The foundation does not meet Rush Town Code §120-18 state road setback of 110 feet from the centerline. Property is located at 7935 West Henrietta Road and is zoned Residential-30.

Chair Corbin stated that workshops do not permit input from the audience. Participation of the audience occurs during public hearings.

Mr. Capps stated that he is in the process of building a house but was issued a Stop Work Order by Building Inspector D'Alessandro and asked to appear before the Zoning Board of Appeals for a front set-back.

Chair Corbin stated that the Code allows for 110 feet front set back, however, the survey may indicate that the dwelling is 104 feet from the centerline.

Mr. Capps stated that the house is located roughly 100 feet to the south and 150 feet to the north. The house is situated on a slab and a lot of grading was done on the property.

Chair Corbin opened the workshop for questions from the Board. Having none, the property visit was assigned to Member Hetrick and Member Swanton. The public hearing date is scheduled for September 8<sup>th</sup> at 7 PM.

Building Inspector D'Alessandro referred the Board to the site plan and showed tablet photos of the parcel. The resident's home is approximately 30 feet from the lot line to the south and closer than stated to the north lot line, an equal distance between the two homes adjacent to the parcel.

Chair Corbin closed the workshop at 8:03 PM.

**DECISIONS:**

Chair Corbin made a Motion **WHEREAS**, this Board has examined **Application 2016-04Z**, submitted by Michael Eadie located at 7476 West Henrietta Road, located in a Commercial Zoning District, requesting a front setback variance and a side set back variance, for a proposed 12' x 20' shed, located on the south side of property, 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 §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."

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

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

**WHEREAS**, Application 2016-04Z was submitted by Michael Eadie, of 7476 West 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, and a 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 FURTHER RESOLVED**, that Application 2016-04Z be granted as submitted with this application, subject to the following conditions:

1. The proposed shed, as submitted in the application, shall be placed no closer than twenty feet (20') from the south property line.
2. The proposed shed, as submitted in the application, shall be placed no closer than one hundred twenty-three feet (123') from the center line of West Henrietta Road.
3. No work is to be commenced on the shed until a **Building Permit** is obtained from the Town of Rush.
4. The construction of this shed is to be completed within one year of the approval of this application.

The reasons for this action are:

1. The placement of the proposed shed is consistent with the neighborhood and the proximity of other pre-existing buildings on the road.
2. The pre-existing house is approximately seventy-five feet (75') from the center line of West Henrietta Road.
3. There will be no undesirable change in the character of the neighborhood.
4. Neighbors have made no objection to the proposed shed.
5. 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.

Vice Chair Koppers seconded the Motion, and the Board polled:

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

Chair Corbin directed the applicant to the Building Inspector who stated that a building permit is required. Building Inspector D'Alessandro stated that an instrument survey or tape map indicating the shed location is required. Pre-fab construction pictures are included in the file.

**APPROVAL OF MINUTES:**

Chair Corbin made a Motion to accept the Minutes of June 9, 2016, and asked if there was further discussion. Board Member Swanton stated that the July meeting did not reflect the Board's discussion of the changes that were needed to be made in the June Minutes and for that reason the July minutes do not reflect what actually happened at the July meeting.

Chair Corbin referred to the June Minutes, Member Swanton stated yes they were amended and not reflected as amended minutes for the June meeting.

Having not encountered non-approval of Minutes, Chair Corbin asked Town Clerk Bucci of the proper procedure.

Town Clerk Bucci stated that she will provide the board with procedural direction on approving minutes and stated that a poll should be taken. Member Swanton is not in agreement with the June Minutes. The Minutes are the Clerk's summary of the meeting and the official record taken by their notes and not required to be approved. It is a recommended courtesy. Unless the Minutes change the meaning, they need not be amended. Amendments occur in the margin and are part of the history record. They are not revised and reposted.

Member Swanton asked that the approval of Minutes be tabled. Word correcting was discussed at the July meeting in order for the minutes to be reflected.

Member Hetrick approved of the June Minutes and saw no reason in not approving them based on an informal discussion that took place.

Town Clerk Bucci asked, not being present at either meeting, if Member Swanton was specifically talking about a horse versus horses or something else.

Member Swanton stated that the July meeting discussion included re-working the wording of the June minutes. The July minutes should be amended. Member Swanton will listen to the June and July Minutes.

Vice Chair Koppers stated he could not vote on the July minutes because he was not present.

Chair Corbin stated that the July Minutes approval would be tabled.

Supervisor Frank forwarded correspondence received from the Pluta residence dated June 23, 2016, in regard to the Hanson Quarry.

Member Swanton suggested that there be an alphabetical last name assignment of members to seconding motions. All members present agreed to try that procedure.

**APPLICATION ASSIGNMENTS:**

Members Hetrick and Swanton are assigned Application 2016-05Z.  
Chair Corbin and Vice Chair Koppers are assigned Application 2016-06Z.

**REPORT OF OFFICERS:**

Councilperson Woolaver, liaison, to the Zoning Board of Appeals stated that a public hearing of August 24, 2016 at 7:15 PM has been set for the proposed approval of the zoning code amendments as presented by the Zoning Citizens Advisory Committee and approved by the Town Board.

Chair Corbin asked if the amendments are forwarded to the boards for their input. Councilperson Woolaver will consult with the Supervisor.

Building Inspector D'Alessandro read part of the 50% rule of the 2010 Energy Conservation Code of New York State. There are many examples. Additional research will be done as it applies to the current variance use applicant.

All Zoning Board Members requested an updated Town General Information List for contact purposes.

With no further business, a Motion was made by Chair Corbin and agreed by common consent that the meeting be adjourned at 8:27 PM.

Respectfully Submitted,

Pamela J. Bucci  
Town Clerk