

**RUSH ZONING BOARD OF APPEALS
REGULAR MEETING
MINUTES OF SEPTEMBER 8, 2016**

A regular meeting of the Rush Zoning Board of Appeals was held on September 8, 2016 at the Rush Town Hall, 5977 East Henrietta Road, and was called to order at 7:01 PM.

PRESENT: Amber Corbin, Chairperson
Garry Koppers, Vice Chairperson
David Flass
Lee Hetrick
Susan Swanton
Shivaun Featherman, Deputy Town Clerk
John Mancuso, Esq., Town Attorney

OTHERS: Dan Woolaver, Town Board Liaison
Phil D'Alessandro, Building Inspector
Erik & Lori Gysel, Residents
Amy & Kristopher Stasiw, Residents
Joseph Stasiw, Attendee
David Capps, Resident

Chairperson Corbin welcomed all and called the September Zoning Board of Appeals meeting to order at 7:01 PM.

PUBLIC HEARING:

Application 2016-05Z by David Capps requesting a front 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.

Mr. Capps read the following required criteria and his response to the Board:

Background

After purchasing an approved building lot the Applicant received a building permit and consulted closely with the Building Inspector, Engineer, and Surveyor. The house location was marked with 10' high poles clearly visible from the street for all to see for about 9 months. The applicant was allowed to build the foundation after the building inspector checked set backs. After receiving approvals from the building inspector for the footer, foundation, plumbing, and framing, just prior to the insulation inspection, Amber Corbin, the head of the Zoning Board of Appeals requested the Building Inspector check the set backs at which time a short fall of 5.7' was discovered and the Applicant was required to apply for an Area Variance. The Applicant has carefully followed the instructions of the building inspector and town officials filing this zoning appeal to resolve this situation.

The five criteria determining an Area Variance are examined

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

Because of the negligible Variance requested no change to the neighborhood will occur. Of the five homes across the street from the property, four appear in Google maps to be less than the required 110' set back with one appearing to have about a 50' setback. The home to the South West of the property is on another street, faces a different direction, is visually blocked by thick vegetation, and is about 200' away. The home to the North, with one small window facing the property, is acclimated with its main entry / garage on the far side and is about 165' away. The closest home with direct visual contact is located directly across the street to the East and owned by Jim Belknap who states:

"I live directly across the street from Dave Capps and Dave has been a good neighbor. I have lived here for 43 years. I like how Dave's house looks and allowing a variance to allow Dave to complete his house 5.7' closer to the street will not be detrimental to anything. What will be detrimental to the neighborhood is not allowing Dave to complete his house and having it sit there unfinished."

The negligible Variance requested will have no effect on the character of the neighborhood or be a detriment to nearby properties. However, denial of the Variance and denying the applicant the ability to finish the home will have a detrimental effect on the neighborhood.

2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.

A scenario has been presented, by a Zoning Board of Appeals member, that it would be possible for the applicant to remove the front 5.7' of the house to negate the need for an Area Variance.

The problems with this scenario are:

1. The house measures 21.58' x 60' for a square footage of 1294.8 square feet. Taking 5.7' off the front would reduce the square footage to 1171.8 square feet and not meet the minimal required square footage.
2. Removing 5.7' from the front of the house would destroy the floor plan of the home and remove the second bedroom and make the house unusable for the applicant. The home floor plan is fixed since the finished floor is concrete and drains, heating pipes, and other utilities are already in place.
3. Removing 5.7' from the front of the house would permanently damage the in-floor heating system embedded in the concrete. Patching cut PEX lines would never restore the integrity of the existing intact lines.
4. Removing 5.7' from the front of the house would permanently damage the seeded and ground concrete finished floor.
5. Removing 5.7' from the front of the house would involve digging out the existing footer and foundation and replacing them under an existing slab. If it could be done it would probably result in severe cracking and displacement of the existing concrete finished floor.
6. Removing 5.7' from the front of the house would be unusual and custom requiring prohibitive amounts of time and money.
7. Removing 5.7' from the front of the house would require removal and replacement of existing electric.
8. Removing 5.7' from the front of the house would require existing ceiling drywall to be removed and replaced.
9. Removing 5.7' from the front of the house would require removal and replacement of existing insulation.
10. Removing 5.7' from the front of the house would cost more than the cost incurred so far to put up the home.
11. Removing 5.7' from the front of the house, if it could be done at all, would be unreasonable and place a unnecessary and unbalanced burden on the applicant.

An Area Variance, aside from Litigation, is the only feasible and reasonable option.

3. Whether the requested area variance is substantial.

When compared to the lawful dimensions the requested variance is slight and unsubstantial.

In *Heitzman v. Town of Lake George Zoning Board of Appeals*, the court upheld that a substantial variance was one exceeding 15%. The Area Variance requested here is 5.18%. The Area Variance requested is negligible and unsubstantial.

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

The Area Variance requested here will have no adverse effect or impact on drainage, traffic circulation, dust, noise, odor, or emergency services. The Area Variance requested here will have no adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

5. Whether the alleged difficulty was self created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

About 9 months ago the home location was marked with 10' poles clearly visible from the street and prior to the foundation being constructed the Building inspector checked the set backs. At the requirement of the building inspector the Engineer and Surveyor were at the site to check elevations and locations. The Applicant followed directions of the Building Inspector, Engineer, and Surveyor and the difficulty was not self created.

Conclusions

In the case *Sasso v. Osgood*, the Court reinforced that the statutes require a zoning board of appeals to engage in a balancing test, weighing 'the benefit to the applicant' against 'the detriment to the health, safety and welfare of the neighborhood or community'

This case is totally one sided. On one side of the balance is no detriment to the health, safety and welfare of the neighborhood or community. On the other side of the balance is a unreasonable and total denial and destruction of individual property rights and a huge imposition of individual hardship and financial destruction.

In consideration of existing laws and case law the most reasonable outcome is for the Town of Rush Zoning Board of Appeals to grant this appeal.

Chairperson Corbin asked if there is anyone in the audience wishing to speak, and to please state your name and address for the record.

Lisa Gysel stated that she has no issue with where the house is built. Her issue is with the seeming disregard for the neighborhood and the rules of the town. Setbacks are for public safety, privacy and environmental protection. If the setbacks impose hardships that nearby homeowners don't face, then the procedure is to get a variance to give permission to encroach the setback. Mrs. Gysel may not agree with everything in the town code, but that doesn't mean she does whatever she wants. When they finished their basement, added a fireplace, deck and fence, they had to follow the rules. There are rules and a town code in place for a reason. If anyone can do whatever they want and then get permission afterwards, then the town laws hold no weight.

Chairperson Corbin stated for the record that Board Members Hetrick and Swanton visited Mr. Capps property twice. The first time they attempted to call and did not receive a response but did go and visit it. Mr. Capps then contacted them and they went back to visit the property a second time.

Chairperson Corbin stated that the Board appreciates Mr. Capps background information and research.

Chairperson Corbin read into the record a signed letter that Mr. Capps submitted from a neighbor, noting that the letter had no date or address on it. It states:

"I live directly across that street from Dave Capps and Dave has been a good neighbor. I've lived here for 43 years. I like how Dave's house looks and allowing a variance to allow Dave to complete his house 5.7' closer to the street will not be detrimental to anything. What will be detrimental to the neighborhood is not allowing Dave to complete his house and having it sit there unfinished. Signed by J. H. Belknap."

Mr. Capps advised the Board that Mr. Belknap lives directly across the street from him and has the most visual contact to Mr. Capps property and added that Mr. Belknap has lived there for 43 years and is very well aware of the character of the neighborhood.

Vice Chairperson Koppers asked Mr. Capps if the building inspector, engineer and surveyor were at his property checking measurements, and if so, can they confirm that the measurement was correct before Mr. Capps started digging the foundation?

Mr. Capps replied, "There were various measurements being taken."

Chairperson Corbin asked, "By whom?"

Mr. Capps answered, "Well, the surveyor; he was checking measurements."

Vice Chairperson Koppers asked, "He actually checked the measurements from the centerline of the road to where the foundation was supposed to be? Who did that?"

Board Member Hetrick asked, "Who put the fiberglass poles in?"

Mr. Capps replied, "I put the fiberglass poles in."

Board Member Hetrick asked if there were stakes or markers already there?

Mr. Capps replied, "There were steel stakes; there was a marker on one of the stakes. The front north stake had a surveyor's mark on it."

Chairperson Corbin asked, "What date were the stakes were put in?"

Mr. Capps replied, "Probably about the end of last year."

There was a discussion on the date of the site map that Mr. Capps had submitted. Board Member Hetrick stated, "This is a tape map and I believe that this tape map was made after the foundation went in."

Mr. Capps stated, "Yes."

Board Member Hetrick noted that there were revisions dated July 27, 2016.

Vice Chairperson Koppers stated, "But at this point in time, before anything was built, there was clearly already a problem."

Board Member Hetrick stated, "The site map was what he started with and the site map would give you a location before any digging. This is 33' from the centerline, and this would be 66' right-of-way for the state. So here he put a mark in; this is the right-of-way for the highway, this is typically what you get before you do any building. This is what he has to show the building inspector to get a permit."

Chairperson Corbin asked Building Inspector D'Alessandro if that was correct. Building Inspector D'Alessandro replied, "Yes, that is how I got it."

Board Member Hetrick continued. "So with this, this would actually be 3' further back because this is a 33' center or 66' state right-of-way so that's why they laid this all out. When a building inspector looks at this; he says ok, its 66', 3 rod road, 33' plus the 80, gives me 113'."

Mr. Capps stated, "That's a little confusing because that's not marked on here. The right-of-way. You know that it's somewhere but I'm not seeing it."

Board Member Hetrick stated, "Because the 80 is right here. This is the edge of the right-of-way and because it's a state road it's 33' to the centerline."

Mr. Capps stated, "So you just know that because you know state roads?"

Board Member Hetrick replied, "Yes Probably on here someplace. "

There was more discussion on pins and a curve box. Board Member Hetrick stated that "most of the time, and I'm not saying that it did happen or didn't happen, but most of the

time when you go to dig a basement, they will have setback lines measured off. Usually an engineer or whoever lays out the basement. But that's where it depicts 80'. And because it's a state road it's 66'. According to that print, if that house was built just like that, it would be 3' back or 113'. And then for a C of O (Certificate of Occupancy), once the basement is up, or the building is up itself, then it's required to get a C of O, you need a tape map – is that right Phil?"

Building Inspector D'Alessandro replied, "Right."

Board Member Hetrick continued, "and so this tape map was done prior to, usually they wait until the end but here it was in question so he went and received a tape map. See here it says centerline, here it's street line or would be the setback. 66', half would be 33', but he's going from here back from the centerline, there's the street line and that's where he came up with those". There was a discussion on where pins were placed, and Mr. Capps pointed them out on the map. Board Member Hetrick stated, "Usually an engineer would set a setback line to make sure this doesn't happen but this would be required for a C of O and basically you got yours early, before you completed everything."

Chairperson Corbin stated, "So from the site plan that was brought to the building inspector, it was setback at 115' from the town setback of 110."

Board Member Flass asked, "When was the first time that someone made an official measurement and found out it was less than 110'?"

Board Member Hetrick replied, "It would be the tape map; that would be the official one."

Chairperson Corbin stated, "Except on the site plan that was laid out to be 113' back. So the revisions state 'house added 7-27-2016'. So that's when the revisions to the map were done. And then found out it to be 104.3 from the southern corner and then 106.7' from the northern corner. And it's measured from the closest corner to the centerline which is where we referred to the 33' line. How did it end up closer than what the site map proposed? How did you end up being this 5.7' closer?"

Mr. Capps replied, "That's a good question. I thought we had that covered but apparently not."

Chairperson Corbin asked, "And when you say "we" is that the person or persons that are actually doing the construction that put the foundation in?"

Mr. Capps answered, "I took measurements. I took measurements from this point - the northeast part of the house out to the street. I went out closer to the pole there. I was assuming that going towards the pole the utilities were coming in directly and the setbacks were checked and I assumed those were correct."

Chairperson Corbin asked, "So when you say the setbacks were checked, who did the checking of the setbacks?"

Mr. Capps replied, "Well, Phil came out and checked the setbacks at one point."

Chairperson Corbin asked, "Before the foundation was in?"

Mr. Capps replied, "Yes."

Chairperson Corbin asked, "So you're saying Phil actually went out and measured with a tape measure?"

Mr. Capps replied, "Yes."

Chairperson Corbin asked, "Phil, do you have any comment on this?"

Building Inspector D'Alessandro stated, "On 6-6-16, footer inspection. Verified side setback of foundation to be at least 25' from property line. I did not have a 150' tape to verify front setback but owner says he is at least 110' from centerline of road."

Chairperson Corbin asked Mr. Capps, "Is that your recollection as well?"

Mr. Capps stated, "That was...I didn't realize the front setback wasn't measured. It was my understanding that it did meet that setback."

Chairperson Corbin stated, "So even though the building inspector did not have a physical tape measure."

Mr. Capps stated, "Well, I didn't realize that. I knew he was taking setbacks; I didn't realize he didn't take all setbacks."

Chairperson Corbin asked, "So you didn't witness him actually doing that process?"

Mr. Capps replied, "I was doing other things on the side. I was busy with some other things."

Chairperson Corbin asked, "But you, at his request, he asked you was it setback 110'?"

Mr. Capps stated, "I don't recall that. I recall him measuring the setbacks and I thought that he had verified that."

Chairperson Corbin stated, "I just need to make sure this is on the public record because obviously there is a non-agreement on what happened potentially. So you said...can you just repeat to me what you said?"

Mr. Capps stated, "Well, I saw him take, with his tape measure, measuring setbacks."

Chairperson Corbin asked, "So you saw him measure the south setback; the southern boundary?"

Mr. Capps replied, "I don't think I saw him...you know, we talked. He said he was going to measure setbacks. He had all of his tape. I was off doing other things."

Chairperson Corbin stated, "So you can't say that you actually saw him measuring the setbacks then with a tape measure."

Mr. Capps stated, "No I didn't see him measuring all the setbacks."

Board Member Flass asked Building Inspector D'Alessandro, "Did you ever measure the original poles?"

Building Inspector D'Alessandro replied, "No, I was just looking for elevations. I saw the poles on the ground and I had requested that he have his engineer go out and set some elevation marks, and there was an elevation mark pin set out on the road, and he had also set an elevation mark on the northeast pole and that gave me the finish floor height that it's supposed to be. There was no verification if those poles were actually 110' from the centerline of the road. There was no indication that I could see written on the poles or anywhere else."

Board Member Flass asked Mr. Capps, "Did you ever have anyone do a professional measurement of those original poles that were put in or was it just your measurements?"

Mr. Capps replied, "Those are my measurements and the elevation mark....there is an electric pole here...I think the elevation mark was right around there also and the elevation mark was somewhere here, and I took my measurements going where the pole was and where the elevation mark was and I got over 110'. It was difficult standing there to see if this was perfectly perpendicular or not."

Chairperson Corbin asked Building Inspector D'Alessandro to educate the Board on elevation marks vs. setback poles.

Building Inspector D'Alessandro stated, "Well, one measures the elevation of the proposed structure in relation to sea level and in relation to what is required by the Monroe County Department of Public Health for the wastewater system, and by the planning board site plans. That map right there will show you the finished footer elevation of the proposed structure to be 552.5."

Chairperson Corbin stated, "But that has nothing to do with the 110' setback."

Building Inspector D'Alessandro stated, "That has nothing to do with the setback. It's a totally different measurement."

Mr. Capps stated, "It's a difficult site in that to get the elevation that the engineer was requesting we really had to keep the house as far forward as possible to get that elevation and if we went back 10' it drops off. The engineer wanted this house raised up more than I really thought it needed to be. The motivation to keep things forward

enough within the 110'. I didn't know until later that Phil didn't have a tape measure that was long enough. I thought the elevations were checked and we moved onto the footer and I had no idea that there was any problem."

Chairperson Corbin stated to Mr. Capps, "But you were off doing something else while he was measuring."

Mr. Capps stated, "Right."

With nothing further from the Board, Chairperson Corbin read into the record the following correspondence:

- The Monroe County Department of Planning and Development comments.
- The Rush Conservation Board has reviewed the application and does not find any aspect of the project to significantly impact the environment.
- The Rush Fire Commissioners has reviewed the application and does not have any issues or concerns with the application.

Chairperson Corbin made a Motion to close the public hearing. Vice Chairperson Koppers seconded the Motion, and the Board polled:

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

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

Mrs. Stasiw explained to the Board, "We are here to get a use variance so we can remove our existing barn/garage and replace it with a 3 car garage with an in-law apartment above the garage. The Planning Board 120-61 C (2) says that it has to be a building existing prior to 2002 but we've been told that since we'd be tearing it down and rebuilding it, it would no longer exist therefore we had to apply for the use variance."

Chairperson Corbin stated that she has some correspondence to enter into the record. The Board had read into the record at the workshop the Short Environmental Assessment Form, however, the Board received an email from Mrs. Stasiw and asked for an explanation.

Joseph Stasiw stated, "We talked last time about putting some numbers together. This applies to that first question. Basically what I did was past projects that we have done, additions, and I compared numbers involving the demolition. I've never been involved in

a tear down of a building before so that's where I've left that range; I put in an estimate from 8,000-15,000 so I just put in a middle number that could be fair. We could go above that or under. These numbers come from basically past projects that I've done."

Chairperson Corbin asked Joseph Stasiw, "Is this your company – Budvale Construction?"

Joseph Stasiw replied, "Yes."

Chairperson Corbin noted, "So you are a professional".

Joseph Stasiw stated, " Yes. So basically what I've tried to do; is I broke it down. In complying with the 50 % rule, I figured that the bottom, the first floor of the garage is what we would end up keeping so I broke it down so that we could look at how the garage construction would go as close to the upper portion."

Mrs. Stasiw added, "The first page lists what a typical cost is to tear down the entire garage. The second page are costs related to tearing down 50 percent. They would tear down the top part, not the bottom part of the building. The difference between doing a complete tear-down vs. refurbishing is about 40,000.00. "

In regards to the Zoning Board's request for numbers regarding hardship, Mrs. Stasiw had submitted an email with costs of two local senior living communities and submitted photos of their property showing the building that they would like to tear-down and rebuild. Mrs. Stasiw advised the Board that they are not planning to build forward towards any of the properties, behind or in front of; it will basically retain the same footprint except they will be going 10' in towards the house so it won't affect setbacks or lines. Other pictures submitted show slopes and the layout of the neighborhood to show their proposed plans will not be making the neighborhood less desirable. Mrs. Stasiw noted that Chairperson Corbin and Vice Chairperson Koppers visited their property and did an inspection so they know what the slope is like and they went through the building, saw where they can't build and why they can't build the way the Planning Board wants them to and this is why they have now come in front of this board seeking a use variance.

Chairperson Corbin clarified, "For a use that's not permitted in an Residential-30."

Mrs. Stasiw stated, "According to what the law says which I still don't agree with and I believe that's why the lawyer is here. I would like a better explanation of that. But anyway I believe that's everything that you have asked us for."

Chairperson Corbin stated, "I'd like to read into the record that I had emailed you asking who the person is who would be living here; I had asked Amy, she said it's her mother. So that's the correspondence between the Board, the town and the applicant. Are there any questions from the audience?"

There was no response.

Chairperson Corbin asked if there are any questions from the Board?

Board Member Flass asked that when they visited the site, did they determine that there's no way they could build something that's attached to the house?

Chairperson Corbin confirmed they did ask the applicants, and asked Mrs. Stasiw to relay what her response had been.

Mrs. Stasiw stated, "The answer is no. If you look at the better picture that you guys have of our home; so this right here is the original A-frame house. The person that had the house before us built an addition that goes out of the house to here. This is now all driveway. This is the septic and leach field. This is driveway, and this is an in-ground pool. Our property ends right here and then this slopes down at a 45 degree pitch and our well is here, and the propane is behind the garage."

Chairperson Corbin stated, "We asked, why not build up on this section, as that is basically one story with a basement underneath..."

Mrs. Stasiw stated, "Correct. It's a cathedral ceiling, it's an open ceiling, and I don't believe that...you're still doing the whole stairs thing. And I know that's what we're doing with the garage, but I don't think...."

Kristopher Stasiw stated, "Well, you wouldn't really have a lot of room up there. It would just be a tiny little place; not really sufficient in size".

Chairperson Corbin stated, "We had asked if she could do an in-law apartment below."

Mrs. Stasiw stated, " and that's my office. I work out of my home."

Chairperson Corbin asked, "Have you ever thought of moving your office onto a newly built garage and redoing the basement?"

Mrs. Stasiw replied, "No I had not thought of that because I would like septic and water."

Board Member Hetrick stated, "Whether it's an office or an in-law apartment, you would still need septic, so that kind of balances out, however, having an office in a garage is legal."

Vice Chairperson Koppers asked Building Inspector D'Alessandro, "The garage right now is separated from the house. Are they allowed to have an in-law apartment in the home if they were to make – if they had a connection from the garage to the house, such as a walkway or a breezeway; would that make that one structure?"

Building Inspector D'Alessandro replied, "No, it wouldn't be a detached garage, it would be an attached garage; if you were going to attach the garage to the house with a breezeway."

Mrs. Stasiw stated, "Well then it's attached and we don't have to get a use variance because the law is you can have an in-law apartment if it's attached or in the house. The detached was the issue so that's where all this comes into play."

Building Inspector D'Alessandro stated, "Theoretically it sounds good but it would still be subject to the approval of the Planning Board."

With nothing further from the Board, Chairperson Corbin read into the record the following correspondence:

- The Monroe County Department of Planning and Development Comments.
- The Rush Conservation Board has reviewed the application and is inquiring if the septic system is adequate for the additional facilities and what plans are there for wastewater from an additional bathroom, kitchen and laundry?
- The Rush Fire Commissioners has reviewed the application and does not have any issues or concerns with the application.
- Three signed letters from neighbors in support of the application.

Mrs. Stasiw stated, "We have started to contact engineers. Joseph has already contacted the Department of Health to get the ball rolling and it's feasible to put in junction blocks."

Joseph Stasiw stated, "They looked at the septic system and we can go with it. He suggested we update it because of the age but he said that we do comply."

Mrs. Stasiw stated, "I know that's hearsay, however, we have at least starting the ball rolling in that regard."

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

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

DECISIONS:

Board Member Swanton made a Motion **WHEREAS**, this Board has examined **Application 2016-05Z**, submitted by David Capps of 7935 West Henrietta Road, Rush, New York (the "Property"), located in an R-30 District, requesting a variance from a front setback requirement for structures of at least one hundred ten feet (110') as set forth in the Zoning Law of the Town of Rush (the "Zoning Law"), Chapter 120-18 for a recently

installed, existing new home foundation 60.5' x 22.1'; and the maps, diagrams and other materials that were submitted with the application; and

WHEREAS, this is a Type II SEQR action which requires no further processing under SEQR; 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 the Board makes the following Findings of Fact and Application 2016-05Z is **denied** for the following reasons:

1. The Applicant owns the Property at 7935 West Henrietta Road, Rush, New York, which is in an R-30 Residential zone. The Property is currently vacant with a new home foundation with dimensions of 60.5' x 22.1 that was recently installed within the existing 110' front setback required by Section 128-18 of the Zoning Law. The Property is 1.55 acres with 407.92' of lot depth from West Henrietta Road along the southerly boundary line and 496.75' of lot depth along the northerly boundary line. West Henrietta Road is a New York State highway.

2. On July 7, 2016, the Town Building inspector found the applicant constructing the foundation at issue several feet within the 110' front set back required by the Zoning Law. A stop work order was issued by the Town. Thereafter, the applicant applied to this Board for an area variance from the front setback requirements of Section 128-18 of the Zoning Law.

3. Section 267-b of the New York State Town Law establishes the requirements for an area variance. In making its determination, this Board is required to engage in a balancing test, weighing the benefit to the applicant against the detriment to the health, safety and welfare of the neighborhood or community if the variance is granted. This Board is also required to consider the following: (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

4. The applicant has failed to submit sufficient information addressing the criteria under the New York Town Law to establish entitlement to an area variance. Moreover, the detriment to the health, safety and welfare of the neighborhood outweighs the benefit to the applicant.

5. An undesirable change in the character of the neighborhood and nearby properties will be created by the granting of this area variance. There are several single family residences adjacent or in proximity to the Property, all of which contain dwellings constructed in compliance with the front set back requirements in the Zoning Law. Granting an area variance to permit the Applicant's house to be constructed within the front set back and closer to West Henrietta Road would be detrimental to the nearby property owners and produce an undesirable change in the character of the neighborhood.

6. The requested area variance is substantial. Although the applicant only requests a variance of approximately 5.7-feet at the closest point of the foundation to the centerline of West Henrietta Road, the variance request is incompatible with the surrounding area. Moreover, granting a variance under the circumstances is incompatible with the Town zoning scheme, which provides that all structures located in residential districts set back at least 110' from a state or county highway.

7. The benefit sought by the applicant could be achieved by other methods. The applicant's property is 1.55 acres in area with more than adequate space between the 110' front setback and septic as per site plans. Without seeking the approval of the Town, the applicant constructed the foundation within the front setback. As an alternative, the foundation can simply be constructed outside of the front set back without any variances required by the Town. The applicant has not provided any information as to his inability to reconfigure his design or simply move the foundation beyond the front set back requirements of the Zoning Law.

8. The difficulty is self-created. The Property is not a substandard lot nor too small for development, but rather contains more than adequate space to construct a house beyond the front setback. The applicant's need for a variance is the result of the applicant self-created hardship in constructing the foundation without regard to the actual location of the front setback on the Property.

Board Member Flass stated "I'd like to discuss a number of points in here. I'd like to respectfully disagree with some of the verbiage in here. First, for reason #2, these are listed as reasons for the denial. Reason # 2 is because the Stop Work order was issued and I don't think that's relevant since as far as I know, no work was done after the Stop Work order was issued. The house had already been constructed at that point. Then 4, there's a statement that the detriment to the health, safety and welfare of the neighborhood outweighs the benefit; I don't see where there's any issues of health, safety or welfare of the neighborhood, and there's a significant loss of interest to the applicant if he has to tear down an entire house. Item # 5; the general language of it, to me, seems to say that it would be undesirable to ever permit an area variance. Most of our purpose here is to grant area variances if they don't produce an undesirable change and # 6 where it says the requested area variance is substantial; I wouldn't say that 5 % could be considered substantial. The last part of item 6 talks about granting the variance and is incompatible with the town zoning scheme but that's the whole point of having an area variance is to have a variance from that."

Chairperson Corbin stated, "To have a variance of something that potentially was there; not already...the code is there, the site plan was there, and the applicant constructed it within the 110' setback so this isn't somebody wanting to already having an existing house up and then having the code changed or something..."

Board Member Flass stated, "As far as I can tell, what happened was he mismeasured, and he made the mistake of not getting a professional measurement to get those poles in the correct spot, so it's definitely self-created but the idea of the area variance is that none of those reasons necessarily precludes the granting of the variance."

Chairperson Corbin asked, "So I could construct a house, knowing potentially because I mismeasured, and therefore this Board should automatically grant it?"

Board Member Flass stated, "Not automatically. I'm saying it's going back to the idea of balance and 5%, at least here you're calling it substantial, but I don't see 5% or 7%, or whatever it actually is, less than 10 %, can we call that substantial?"

Chairperson Corbin stated, "But that would be for something that, in my opinion, if someone hadn't constructed something already."

Board Member Hetrick stated "I don't believe he has to move the whole house. Just has to remove whatever from the front, and he can add it to the back, and he can add it to the side. It's not like he has to go and jack up the whole house and move it. He could take the footage off."

Board Member Flass stated "As he pointed out substantial, what if he has in-floor heating that can't be moved?"

Board Member Hetrick stated "Right, but he hasn't shown that substantial. I don't know what substantial is. I don't have a dollar value on it. I don't know what it would take."

Chairperson Corbin stated, "And you're also than saying, well this house is closer to West Henrietta Road; all the other houses are setback right there and now they are looking into the back of that house because he's that much closer vs. the character of the neighborhood on that side of the road being setback at 110' and as I think his neighbors pointed out why do we have zoning laws that if beforehand people aren't going to follow them whether it's self-created."

Board Member Flass asked, "Well, then is the question whether it's intentional or accidental?."

Chairperson Corbin replied, "Well, that's not what we're here to decide."

Board Member Flass stated, "Because it's already constructed. He's not applying for the variance because he's intending to build it 7' too close, it's that it was, whether intentionally or accidentally, already built".

With no further comments, Vice Chairperson Koppers seconded the Motion, and the Board polled:

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

Chairperson Corbin made a Motion **WHEREAS, Application 2016-06Z** was submitted by Kristopher Stasiw and Amy Clark-Stasiw (the "Applicant") for property located at 290 Stonybrook Road, Rush, New York (the "Property"), requesting a use variance from the requirements of the Rush Town Code, Chapter 120-61C(2), located in a R-30 District, for a proposed construction of an Accessory building (detached 3 car garage), with an Accessory apartment (in-law apartment) above the garage, as described in the maps and other materials submitted in 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 on the material was read and these statements were considered by this Board; now therefore;

BE IT RESOLVED, that this Board makes the following Findings of Fact, and that **Application 2016-06Z** is **denied** for the following reasons:

FINDINGS OF FACT

1. The Applicant owns the Property at 290 Stonybrook Road, Rush, New York, which is located in an R-30 Residential zone. The Property is currently utilized as a single family residence, with a 2 car detached garage with storage above and an attached workshop on the side to the detached garage. Detached garage was built in 1976 according to Applicant. Applicant seeks a use variance to demolish the existing detached garage, attached workshop and construct a new Accessory building (3 car garage) with an Accessory apartment (in-law apartment) above the garage. The requested use is not permitted, given the Accessory apartment is not proposed to be located in either the principal dwelling or in addition to the principal dwelling. The requested use is not permitted as well, given the proposed newly constructed detached Accessory building, 3 car garage with Accessory apartment above, did not exist prior to June 1, 2002.
2. Section 267-b of the New York State Town Law establishes the criteria that the Board must use in deciding on a use variance application. An applicant must meet each of the following criteria in order to obtain a use variance: (a) For each and

every permitted use in the Residential District, that it allegedly cannot realize a reasonable return, as “demonstrated by competent financial evidence;” (b) Its hardship related to the property is “unique and does not apply to a substantial portion of the district or neighborhood;” (c) The variance, if granted “will not alter the essential character of the neighborhood;” and (d) The alleged hardship related to the property has not been “self-created.”

3. The Applicant has failed to meet its burden of proof because the application fails to meet each of the required criterion set forth in Section 267-b of the New York State Town Law.
4. The Applicant has failed to provide sufficient proof demonstrating that they cannot realize a reasonable return. The information provided by the Applicant is the estimated cost for rent at a Senior Living Facility in Webster, New York. The monthly rent for a 760 square foot apartment is \$3,394 per month. Cloverwood, for a one bedroom apartment start at \$205,000 with a monthly fee of \$3,155/month. This is insufficient to establish an inability by the applicant to realize a reasonable return from the allowable uses of the Property itself. The Applicant has also not provided any financial evidence establishing whether any other allowable use for the Property in question would actually yield a reasonable return.
5. The Applicant has also not considered alternatives which eliminate the need for a use variance. For example, the Applicant will not consider renovating the basement of the existing single family residence to an accessory apartment. Applicant will not consider constructing a second story to the existing single story residence, given the vaulted ceiling would be removed. Applicant prefers to have their mother move closer to them, on the same property. Mother of Applicant currently resides at 1184 Farnsworth Road South, Henrietta, New York for the past 60 years.
6. The alleged hardship is not unique to the Property, but rather applies to the entire zoning district. The requirement under Section 210-61C(2) of the Zoning Code that an accessory apartment may be located in an accessory building provided it existed prior to June 1, 2002 ,applies uniformly to all other landowners in the Town of Rush and the R-30 District.
7. The alleged hardship is self-created by the Applicant. The Applicant purchased the Property in 2014. The current Zoning Code 120-61C was in affect at time of purchase and clearly prohibits locating an accessory apartment in an accessory building unless such accessory building existed prior to June 1, 2002.
8. Based on the above, the Board concludes that the Applicant has not proven that it cannot realize a reasonable return, nor that lack of return is substantial as demonstrated by competent financial evidence; the hardships identified are not unique to the Property; and the alleged hardship has been self-created.

9. This action denying the Applicant's request for a use variance is not one having a significant effect on the environment. Therefore, it is not necessary for the Board to undertake a review pursuant to the New York State Environmental Quality Review Act.

With no further comments, Board Member Swanton seconded the Motion, and the Board polled:

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

Mrs. Stasiw stated, "This is where I am now going to speak to the attorney about 120-61 C (2). The building existed, and that is what the law says, *existed*, prior to 2002. The building is not a brand new building that I want to put on the property; it exists. I want to make it to code and to do that, the benefit would be to tear it down instead of refurbish it because it's not 2 by 4's or 2 x 6's and according to the New York State ECC code the 50 % rule is no longer in effect. And that is the law, that is the rule that the Planning Board was using to deny our application for a permit to build the accessory in-law apartment. I would like to know where in the code it says that we cannot take this existed building that exists on our property, and rebuild it to code and have the in-law apartment in it because that's what the code says. You can have an in-law apartment in an accessory building if it existed prior to 2002. It existed."

Attorney Mancuso stated, "The energy code is not relevant to what this Board is deciding."

Mrs. Stasiw stated, "No, I know it's not relative to this Board but since I have you here and I have been having difficulty getting a hold of you."

Attorney Mancuso stated, "All I can tell you is that I am here at the request of the Board. The Board has made a determination that before it is an application to request, and the facts as I understand them, are to demolish an existing accessory structure and rebuild a new accessory structure on the property, and in that new structure is going to be an in-law apartment or an accessory apartment as defined by the Town Code. If I am incorrect, please tell me."

Mrs. Stasiw stated, "But that's not the Zoning Board's decision. It's the Planning Board's decision."

Attorney Mancuso stated, "Whether that use is permitted is the Zoning Board's decision. They decide whether that particular..."

Mrs. Stasiw stated, "We don't need a use variance if according to 120-61 C (2) an accessory building may be made into an in-law apartment if it existed on the property prior to June 1, 2002. This accessory building is on the property. It has been on the property since 1976."

Attorney Mancuso stated, "Correct, but again my understanding is you're not building the in-law apartment within that existing building."

Mrs. Stasiw stated, "It's not existing. It's existed."

Attorney Mancuso stated, "The building needs to have existed prior to..."

Mrs. Stasiw interrupted but inaudible.

Attorney Mancuso stated, "Yes, but it will not exist once it's demolished and a new building is constructed. The building that will house the apartment does not exist right now. It did not exist in 1992. The purpose of that provision is effectively to allow for in-law apartments to continue as basically for ones that for existing structures that existed prior to 2002 you're allowed to have an in-law apartment in that property. But you're not allowed to construct new accessory buildings on properties to then house in-law apartments. That's where the Zoning Board..."

Mrs. Stasiw stated, "...we can refurbish this building. But where's this 50% rule?"

Attorney Mancuso replied, "There is no 50% rule as it relates to the energy code that would be relevant to what this Board is deciding tonight."

Mrs. Stasiw stated, "So if we decide to refurbish this building, we can go ahead and refurbish the building. We don't knock it down, we just now shore up everything and then..."

Attorney Mancuso stated, "I can't advise you as to what you can and cannot do with your property but if you have a proposal that involves refurbishing an existing structure and you want to submit that to the Code Enforcement Officer, I can certainly work with the Town to decide what if any approvals you may need for that. But that's not what was before the Board; refurbishing an existing building."

Mrs. Stasiw stated, "Correct. This was where we had started out, with going to the PB and the PB; we had the rules in front of us saying this is what we want to do, and they said you could if you maintain 50%. However, there is no 50% rule, so I want to know where in the town law it says I can't take my existing building and leave a wall, and build around that wall, and that's ok because the building existed prior to 2002. I could keep the slab."

Board Member Hetrick stated, "I could be way off base here but the code says one family dwelling per lot. I believe that the intent of the law was, there's only one left in town that I know of, there may be two, they had farms, they had tenant houses, if you

take West Henrietta Road – going out to Avon, Steel’s on the left has a fruit stand out front, he has two tenants homes there. That would be an accessory building but it’s a live-in. I’m thinking the intent of the law was, if there’s an apartment in that building prior to June 1, 2002 then it was a use back then permitted but there was no living in that building prior to or ever up until now that you want to refurbish it. So when reading this, my thought was when they did this R-20, R-30` one family dwelling per lot.”

Mrs. Stasiw asked “May I come up? I want to see what you’re reading.”

Board Member Hetrick stated, “Yes. This is under the code R-20, R-30...”

Mrs. Stasiw stated, “But if you do go to 61, ‘Restricting concerning accessory apartments. Owner- occupied. The owners of the dwelling within which the accessory apartment is located shall occupy at least one of the dwelling units on the premises for at least nine months each year.’ We would live in our home the entire year. The second ‘location. The accessory apartment may be located either in the principal dwelling or in an addition to the principal dwelling. It may also be located in an accessory building, provided such accessory building existed prior to June 1, 2002.”

Board Member Hetrick stated “Right. I am understanding that as the accessory building was already an in-law apartment.

Mrs. Stasiw stated, “But that’s not what that says.”

Chairperson Corbin stated, “It says in addition to. Which means that the accessory apartment was already attached.”

Mrs. Stasiw stated, “Or in an addition, not in addition to. In an addition.”

Chairperson Corbin stated, “Like, in addition to your house.”

Board Member Hetrick stated, “Correct.”

Attorney Mancuso advised, “The first sentence is not the issue. “

Mrs. Stasiw stated, “It may also be located in an accessory building, provided such accessory building existed prior to June 1, 2002, and otherwise conforms to the requirements of this chapter.” And the dwelling is not this big, can only take two bedrooms, etc. etc. so that’s where I am not understanding.”

Attorney Mancuso stated, “The Code states expressly that the accessory building needs to have existed prior to June 1, 2002 if it exists. If it existed as of that date and is still there, then an accessory apartment, provided it meets the other requirements of the Code, may be able to be situated in that structure. If it did not exist as of 2002 i.e. A new construction, then that is not compliant.”

Kristopher Stasiw stated, "So now the question is what defines a new construction? How much of this building can we renovate before it's considered new construction? This is the balancing act that we're stuck in. We prefer to just flatten it because now we can build it to Code. It will be a nicer building. Our other option is to refurbish this building like you said, we can place the in-law apartment in the building and that apparently fits the bill as far as the code is concerned so if we're allowed to do that, can we take down two walls, and rebuild those walls? I don't know who decides that. That's kind of where we're stuck. How heavily can we refurbish this building?"

Attorney Mancuso stated, "It's not my decision to, but I can advise you to what you can legally do within the confines of the Code. I am advising the Board and the Code Enforcement Officer as to what, from a legal standpoint, that provision can be construed to mean in terms of what was before the Board. What was before this Board was an application for a use variance for a new building, so understand that was the context within which the Board was reviewing this. If you have another proposal, if you come back to the Town with something modified to say well, I am only demolishing this many walls, and I think this is a renovation, then the Code Enforcement Officer and Building Inspector are the ones who are going to review that and make a preliminary determination and if you disagree, it goes to the ZBA just like it did with the use variance. I am here to advise them as to whether that interpretation is legally sufficient or not, but that's the Town's decision, not mine."

Mrs. Stasiw stated, "The issue we're having is Phil brought up the 50% rule to the Planning Board and told them we needed to maintain 50% of the building, however, that's not a law. It's not written in the zoning board or it's not written in the town codes, it's not written anywhere except in the New York State ECC. I've been through all the codes. The Planning Board denied us."

Attorney Mancuso stated, "Well I don't think the Planning Board has done anything."

Chairperson Corbin advised, "You just went informally to the Planning Board."

Mrs. Stasiw stated, "We did but they verbally denied us and told us that we should go for a use variance."

Chairperson Corbin stated, "I don't think that they can verbally deny you if you don't have an application before them though. I think you were just there informally, correct?"

Building Inspector D'Alessandro stated, "Yes, they were there informally but the Planning Board did say that they determined that they probably need a use variance and that they would not be able to alone grant them approval for an accessory apartment because of this situation."

Chairperson Corbin stated, "So they recommended you come here. They just didn't say no."

Mrs. Stasiw stated, "I know that it's a process and I get that it's a process."

Vice Chairperson Koppers stated, "The big question which this Board cannot rule on is it's called an existing building. Somebody needs to step up and say, like I think you made a great point, what is an existing building?"

Mrs. Stasiw stated, "And that's where we've been going around and around with everyone."

Kristopher Stasiw stated "We thought it was the town attorney who made that determination. You're saying that Phil makes that determination?"

Building Inspector D'Alessandro stated, "Well, myself and the Planning Board because the Planning Board has to review your site plan and what you propose to do to construct this accessory apartment. So it's kind of a joint thing but I can't approve anything solely; whatever plan you give me. They're going to have to make a determination as to is this still the existing building or is it not?"

Mrs. Stasiw asked, "But what are they going to use as their criteria as to what an existing building is?"

There were multiple people speaking over each other.

Attorney Mancuso stated, "The energy code relates to the building specifications. It has nothing to do with the zoning. It's not incorporated or otherwise applicable to that issue. The issue of whether the accessory building existed prior to 2002 is a decision that the town has to make based on the information that is before it. Again, I am advising this Board as to what is currently before it and was a new building. So if a new building is what's in front of the Board, then it didn't exist prior to 2002 but if your modified application or your further explanation of what you're trying to construct what you're changing is to renovate an existing structure, then you need to submit that so the Town can review it and make a decision on whether it existed or didn't. If you're demolishing 99.9 % of the building and leaving a pole; I don't know what the Board is going to decide; whether that constitutes existing or not."

Kristopher Stasiw stated, "That's why we'd like to get some sort of an answer, some sort of a feeling prior to making a submission to the Board because we are just guessing . We could come up with 100 different plans, one for each percent but we don't want to come up with 80 different plans. That's the answer we're looking for before we put a lot of effort into the process."

Attorney Mancuso stated, "Let me speak with the Board and with the Building Inspector then we will, either myself or maybe the Board or someone will follow up with you and give you an answer as to how to go about to getting that answer to that question."

Mrs. Stasiw stated, "The town has to have a site plan in by tomorrow if I'm going to get on the October schedule"

Deputy Town Clerk Featherman advised, "Because the 10th falls on a Saturday, we accept applications the following work day until 4:30 pm."

Multiple people talking over each other.

Mrs. Stasiw stated, "For every time we get delayed, we're delaying a month. If we get in for October, we get voted on in November, and we might be able to break ground in December."

Deputy Town Clerk Featherman stated, "Actually the Planning Board works differently than the Zoning Board. For the Zoning Board, the first month is the workshop and the following month is the public hearing. For the Planning Board, if you submit your application by the 10th of the month before, that's your public hearing and that's when the decision is made."

Chairperson Corbin noted, "Unless they have to table it because they need more information."

Deputy Town Clerk Featherman stated, "Yes, they may table it if they have some issues but generally speaking, that's when they make a decision."

Mrs. Stasiw stated, "I have one other comment based on the woman who made the comment on why do we have zoning laws if we aren't going to abide by them. There is somebody that I've been made aware of in the Town of Rush who has done exactly what we want to do, however, she didn't come to you guys, and she didn't get approval and now her building is not to code, and she didn't have the Health Department come to look at it; are you going to make her tear it down? Is there a fine?"

Multiple people speaking over each other.

Attorney Mancuso stated, "I will work exponentially with the Board and I will get back to you."

Kristopher Stasiw stated, "We would appreciate that."

Board Member Flass stated, "Can I just officially say I appreciate how much work you've done to stay within the law, and I realize how many hoops you're trying to jump through and more power to you for doing the work that you've done and for keeping on it."

Vice Chairperson Koppers stated, "I concur with David. You've done a wonderful job and this was a tough, tough one. Amber and I spent a Sunday afternoon trying to..... our job is to go by the law of the Town and that's, I mean if I had my Zoning hat off and my hard hat on, I would have said go. I feel for you, I know what you're going through with your mom, it's a tough one to put together and you did a wonderful job."

APPROVAL OF MINUTES:

Chairperson Corbin stated "Approval of the Minutes of the last ZB meeting. It says first we would discuss the Tabled Minutes of July 14, 2016."

Board Member Swanton stated, "Yes; we tabled the approval of the July Minutes so that I could listen to the tapes of the June and July Zoning Board Minutes and I very much appreciate the fact that Town Clerk Pamela Bucci set me up with those and I listened to them. I clearly heard that we did amend the June Minutes at the July meeting which the Minutes did not reflect, however, I have now discovered a larger problem. Hence all this paperwork, some of which I just received at 3:00 pm today. Apparently the Zoning Board of Appeals is supposed to have something called Rules of Procedure and the ones that are adopted for the Town Board are not the same as we should have for the Zoning Board and the Planning Board should also have their own. I have been communicating with the New York Department of State, that was the recommendation of David Zorn from the Genesee Valley Planning, and I have enough information that I think it merits an examination by some other Member of this Board with me so that we can come back with a recommendation at our October meeting. Based on the information that I have heard I don't believe that this Board has the right to approve any Minutes because we don't have Rules of Procedures in place, therefore until that's clarified, I will be voting nay on all the Minutes."

Chairperson Corbin stated. "Alright. So on the matter before us, the Tabled Minutes of July 14th, where Susan just reflected that the Minutes of July 14th did not reflect that we had amended the Minutes of June 9th which we then approved, we tabled those so Susan could look at that, is there any discussion on that matter?"

Deputy Town Clerk Featherman stated "Town Clerk Bucci went through the recordings of the Minutes and she also helped me at the time write up the summary so may I read to you her stand?"

Chairperson Corbin "Yes"

Deputy Town Clerk Featherman read "Minutes are to include a summary of all motions, resolutions and matters voted upon. That is what is required by law. In this instance, the June minutes reflect that a person came to the ZB wanting to lodge a complaint about a horse allowed in the neighborhood. The horse was making dust and destroyed his backyard when it got out. Vice Chair Koppers repeatedly told the resident that this was not this board's role. They make decisions regarding zoning variances. The TB makes decisions when the code needs to be revised. I know that there was a large discussion among ZB members during Mr. Conklin's visit. There was also a discussion about his visit at the July meeting, however, the discussion didn't belong there. Rick Tracy had been contacted regarding the complaint and had called the resident. To date 9/7/16, Mr. Conklin has not returned his call and therefore a legitimate complaint hasn't been lodged to Mr. Tracy. Although the ZB had a great deal of discussion about the horse, properties, districts, fences, etc., none of it is relevant to the ZBA. It didn't belong there and doesn't belong in the Minutes any further than it did in the June

minutes. Rick Tracy agrees that it is his concern and matter to deal with if Mr. Conklin returns his call; not that of any Board at this time. At the August meeting, I believe amending the Minutes is a moot point and should not have been an issue. It is the discretion of the Clerk producing the Minutes. Yes they can be amended if there is an error but in this case, there wasn't an error and adding a discussion on a topic that didn't belong at a ZBA meeting shouldn't be included in the minutes. Let the CEO include all that should be included in his notes and documentation if Mr. Conklin calls him back. He may have decided to just be a good neighbor/get along and find an agreeable term in dealing with the horse. My accounting and stand regarding meeting minutes that I can discuss with Susan Swanton or any one of the Board members if they so desire."

Board Member Swanton stated, "Thank you and thank Town Clerk Bucci. It brought up this larger issue and that is what I will read from the email that I got from Erin Thomas of the Department of State. The crux of the issue is that there is no known authority for the Zoning Board to approve Minutes in the first place, and that's because we don't have Rules of Procedure so that, I think, is the larger issue than this specific amendment that we wanted to make to the Minutes. I hear what both Town Clerk Bucci and Deputy Town Clerk Featherman are saying, and I understand that it's common sense if a Board approves the Minutes, that they can amend them. On the other hand, if they don't have the authority to approve the Minutes, then they're simply acknowledged as being received. So that is the thing that we need to determine. It's the larger issue of what's the authority of this Board as far as approval of Minutes."

Attorney Mancuso asked, "What did the Department of State indicate was the legal basis by which Rules of Procedure were necessary for the Board to approve Minutes? Did they cite anything?"

Board Member Swanton replied, "Yes. I've got..."

Attorney Mancuso stated, "This is probably before my time; this town attorney but do we know that, in fact, there aren't Rules of Procedure that are currently in place for the Zoning Board?"

Board Member Swanton replied, "Yes. The ones that Town Clerk Bucci got me are in the back of the folder."

Attorney Mancuso stated, "This is for the Town Board but do we know they don't exist for the Zoning Board?"

Board Member Swanton replied, "I would assume that if it existed for the Zoning Board that every Board Member would have a copy of it, right?"

Chairperson Corbin stated, "I believe that what from Town Clerk Bucci told us at the last meeting was that the Minutes, as Shivaun just read, the Town Clerk has the authority to transcribe the Minutes."

Board Member Hetrick stated, "My impression that I got from her was she writes down what she interprets it to be. If I disagree with it, if it says that Garry said on the right side not on the left side and I disagree with it, she's not going to change that, she would put a note next to it saying that I questioned it. She wouldn't take that paragraph out she saw is as left to right, I saw it as right to left, she would make a note next to it but she would not change it."

Discussions over each other.

Attorney Mancuso stated, "I can just tell you for the past eight years, I have not had this problem. If the Board has any concerns, there's nothing legally requiring you to approve Minutes at this point. I mean certainly we can take a look at this and get back to you by your next meeting. You can table your Minutes as long as you feel it's appropriate. There's not going to be any ramifications."

Chairperson Corbin stated, "No, because they publish them without our approval"

Attorney Mancuso stated, "I will take a look."

Board Member Hetrick stated, "We don't even have to take Minutes."

Attorney Mancuso stated, "I don't know that that's accurate. Every meeting of a public board, there needs to be Minutes reflecting what's occurred. The clerk has to take Minutes."

Board Member Hetrick stated, "The clerk does. But we don't need to approve or disapprove."

Chairperson Corbin stated, "Well, apparently we don't have the authority to."

More talking over each other.

Attorney Mancuso stated, "Minutes need to be prepared. Whether they are approved or not is more of a formality in the circumstance of these Boards. But again, let me take a look at it."

Board Member Flass asked, "Is there any legal purpose for having Minutes that have been approved vs. Minutes that were just recorded; in case of litigation?"

Attorney Mancuso advised, "In some circumstances approving the Minutes could reflect the deliberations and decisions of the Board; any decision that was made which could at some point be relevant in terms of litigation. For example, if someone challenges the decision and there wasn't another record to reflect what had actually occurred - the Minutes as approved by the majority of the members of the board would constitute its determination so there are reasons to approve these and in the cases on Planning Boards and Zoning Boards there's definitely a reason to approve them in addition to the resolutions. Now if you did stand alone resolutions it would be even more critical but

since you have separate stand alone documents the Minutes are merely reflecting additional deliberations of the Board. I still encourage the Board to approve them based on the majority of the Board as to what occurred at that meeting because there are things that you say that may not be necessarily be reflected in the other resolutions.”

Deputy Town Clerk Featherman stated, “What needs to legally be in the Minutes, as Pam stated in her notes, is a summary of all motions, resolutions and matters voted upon.”

Attorney Mancuso stated, “Correct.”

Chairperson Corbin made a Motion to approve the Tabled Minutes of July 14, 2016. Vice Chairperson Koppers seconded the Motion, and the Board polled:

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

Board Member Swanton voted nay “For the reasons so stated beforehand.”

Chairperson Corbin made a Motion to approve the Minutes of August 11, 2016. Vice Chairperson Koppers second the Motion, and the Board polled:

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

Board Member Swanton voted nay “For the reasons so stated beforehand.”

Board Member Flass abstained as he was not present at the August 11, 2016 Zoning Board meeting.

Chairperson Corbin stated that at the next Zoning Board meeting, there will be a more formal discussion on this topic.

REPORT OF OFFICERS:

Councilperson Woolaver stated, “Town Clerk Bucci is putting together your comments on the Zoning Citizens Committee. When I get them, I will forward them to the Zoning Citizens Committee and they will be discussing it, and it will probably be with the Zoning.

Chairperson Corbin stated, “and with the Planning Board –when the sign ordinance was before, and the Conservation Board....”

Councilperson Woolaver stated, “Yes.”

Building Inspector D’Alessandro had no report.

BOARD BUSINESS:

Board Member Flass offered to help gather information regarding Rules of Procedures with Board Member Swanton in preparation for the next meeting.

With no further business, a Motion was made by Chairperson Corbin and agreed by common consent that the meeting be adjourned at 9:02 PM.

Respectfully Submitted,

Shivaun Featherman
Deputy Town Clerk