

**RUSH ZONING BOARD OF APPEALS  
REGULAR MEETING  
MINUTES OF DECEMBER 11, 2008**

A regular meeting of the Rush Zoning Board of Appeals was held on December 11, 2008 at the Rush Town Hall, 5977 East Henrietta Road, and was called to order at 7:00 PM.

**BOARD MEMBERS PRESENT:** Don Van Lare, Chairman  
Robert Weiler  
Dan Taylor  
Amber Corbin

**EXCUSED:** Kelly Pruden

**OTHERS PRESENT:** Gerry Kusse, Code Enforcement Officer  
Werner Wandersleben, Resident  
Eddy Callens, Resident  
Karen Knotowicz, Resident  
Wilfried Schneider, Resident  
Elfriede Schneider, Resident  
John Morelli, Resident  
Jeanne Morelli, Resident  
David Vaughn, Resident

**PUBLIC HEARING:**

**Application 2008-05 Z** by Werner Wandersleben requesting a setback variance for an existing outdoor furnace. The current location does not comply with the required setback in an R-30 Zoning District. Property is located at 555 Five Points Road.

Applicant Werner Wandersleben stated that he has installed an outdoor furnace for the purpose of heating his home and it is the only source of heat for the house. Mr. Wandersleben was notified by the Rush Building Code Enforcement Officer that a permit is required for the installation of an out door furnace and a variance is required for placing it within the setback of the side lot line. Mr. Wandersleben stated that he tried to place the unit where it would not be visible to the neighbors. Mr. Wandersleben is aware of the complaints by the neighbors due to the smoke produced. He stated that pine is the primary type of wood burned in the furnace. It was also stated that other items such as paper and garbage are not burned as it affects the performance of the furnace as well as voids the warranty. Mr. Wandersleben is willing to add to the chimney in order to help disburse the smoke.

Resident, Karen Knotowicz stated on one occasion the smoke was so heavy that they thought their house was on fire. The smoke also penetrated the furniture, drapes and carpeting; it took several weeks for the smell to dissipate. Karen

stated that the smoke has also agitated her eyes and throat and they have had to keep their windows closed periodically.

Resident, Jeanne Morelli stated that she has asthma and the smoke has affected her eyes and caused coughing. She also said she has had to keep the windows to their house closed when the smoke is lingering.

Resident, John Morelli expressed that having to close the windows has become a great concern. In researching outdoor furnaces, Mr. Morelli found a 2005 report from the Attorney Generals Office that stated outdoor furnaces emit, on an average per hour basis, 4 times the particulate matter than a regular wood burning stove. The report also states that the basic design causes fuel to burn incompletely resulting in thick wood smoke and particulate emissions. Short chimneys and reduced drafts fail to disburse smoke causing health issues to be amplified. Mr. Morelli stated that he wanted to be able to offer a solution.

Wilfried Schneider stated that he does not think the applicant should move the furnace because the problem is not the location, it is the smoke that is produced by the furnace that is bothersome.

The Zoning Board stated that had they known about the furnace when the garage was being installed 2 years ago, the board could have suggested moving the garage to accommodate the furnace.

Gerry Kusse discussed outdoor furnace regulations and the fact that there are not any in this immediate area. Local surrounding towns are talking about creating regulations for the future. Gerry also requested that the Zoning Board supply him with their opinions on regulations for future reference.

Resident, Eddie Callens conveyed that he was present at the meeting to learn more about outdoor furnaces because he may consider installing one in the future.

#### **CORRESPONDENCE:**

Don Van Lare entered into the record that The Monroe County Department of Planning and Development has declared this application a local matter. Don Van Lare also read correspondence from the Rush Fire Commissioner stating that he has no concerns regarding this matter.

With no further discussion Don Van Lare declared the Public Hearing closed.

#### **APPROVAL OF MINUTES:**

The Minutes of November 13, 2008 were reviewed.

Amber Corbin made a motion to approve the minutes of November 13, 2008 as submitted.

Don Van Lare seconded the motion and the Board Members polled.

Roll: Robert Weiler        aye  
      Dan Taylor            aye  
      Amber Corbin        aye  
      Don Van Lare        aye    carried.

**INFORMAL DISCUSSION:**

Dan Taylor has submitted his resignation from the Zoning Board effective December 31, 2008. All board members wished Dan Taylor well and thanked him for his time served on the Zoning Board.

The Board discussed sign ordinance and the tentative upcoming workshop for the proposed sign ordinance. The sign inventory compiled by Gerry Kusse will be forwarded to the Zoning Board.

**DECISIONS:**

Amber Corbin made a Motion **WHEREAS**, this Board has examined Application 2008-05Z, submitted by Werner Wandersleben of 555 Five Points Road, located in an R-30 Zoning District, requesting front and side setback variances for an outdoor wood burning furnace, previously installed by applicant without a permit, on the north side of an existing 2 car garage and the maps, and diagrams and other materials were submitted with the application.

**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 granting of individual setbacks and lot line variances. +

Don Van Lare seconded the motion and the Board Members polled.

Roll: Robert Weiler        aye  
      Dan Taylor            aye  
      Amber Corbin        aye  
      Don Van Lare        aye    carried.

**WHEREAS**, Application 2008-05Z was submitted by Werner Wandersleben of 555 Five Points Road, requesting a variance from a front setback requirement for structures of at least one hundred- ten (110) feet as set forth in the Code of Rush, Chapter 120-18, and a side setback variance requirement for structures of at least twenty-five (25) feet, 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 on the matter was read and statements were considered by this Board, then,

**BE IT RESOLVED**, that Application 2008-05Z be denied for the following reasons:

1. The installation of an outdoor furnace requires a permit pursuant to Rush Town Code Chapter 115, section 115-7 and no permit was applied for and the applicant is currently in violation of Section 115-7 at this time.
2. The installation of an outdoor furnace at the location requested by the applicant would create a discernable detriment to the health, safety and welfare of the community and neighborhood.
3. Benefit sought by applicant can be achieved by some method, feasible for applicant to pursue, other than area variance.
4. Alleged difficulty was self-created.

**BE IT FURTHER RESOLVED**, that in order to be in compliance, applicant must do the following:

1. Apply for a permit for the installation of the outdoor furnace within the next ten (10) business days with the Town of Rush.
2. Applicant will add three additional four(4) foot lengths to the existing chimney of the outdoor furnace so that the chimney is five(5) feet higher than the peak of any roof structure located within one-hundred fifty(150) feet of the outdoor furnace.
3. Modifications to the chimney to be completed by December 31, 2008.
4. Review the specifications and requirement of the outdoor furnace with Town of Rush Building Inspector.
5. Relocate the outdoor furnace no later than May 31, 2009, to an area where no area variance would be required.

Robert Weiler seconded the motion and the Board Members polled.

Roll: Robert Weiler            aye  
      Dan Taylor                aye  
      Amber Corbin            aye  
      Don Van Lare            aye    carried.

RUSH ZONING BOARD OF APPEALS  
DECEMBER 11, 2008

With no further business, a motion was made by Don Van Lare and agreed by common consent that the meeting be adjourned at 8:10 PM.

Respectfully Submitted,

Meribeth Palmer  
Deputy Town Clerk