

**RUSH ZONING BOARD OF APPEALS
REGULAR MEETING
MINUTES OF NOVEMBER 12, 2009**

A regular meeting of the Rush Zoning Board of Appeals was held on November 12, 2009 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
Al Simon
Kelly Pruden
Amber Corbin
Meribeth Palmer, Deputy Town Clerk

OTHERS PRESENT: Gerry Kusse, Code Enforcement Officer
Lisa Sluberski, Planning Board liaison
Steve Dzina, Resident
Hillary Dzina, Resident
Thomas Roth, Resident

PUBLIC HEARING:

Application 2009-07Z by Thomas Roth requesting a front setback variance for a proposed addition to the main dwelling. The proposed location does not comply with Rush Town Code §120-198. Property is located at 1839 Rush Scottsville Road and is in an R-20 zoning district.

The reason for the variance request is that the house is a pre-existing/non-conforming structure. The addition will not be any closer to the road than the existing house. Mr. Roth stated he is proposing a 12 foot x 16 foot addition to the kitchen which is on the east side of the main dwelling. After measuring the front set back, the zoning board noted that the map should be corrected to show a front set back to the existing house as 52 feet. Mr. Roth is asking for a 35 foot variance for the proposed addition. The addition will be sided to match the existing house.

Monroe County Department of Planning and Development has ruled application 2009-06Z as a local matter.

Chairman Van Lare read a letter from residents Gail and Peggy Mack dated November 2, 2009 stating that they have no objections to Mr. Roth's application.

Mr. Van Lare declared the Public Hearing closed.

OLD BUSINESS:

Application 2009-03Z by Steve and Hilary Dzina requesting a height and location variance for an existing fence on the property located at 6278 Rush Lima Road. The fence does not comply with §58-6 and §58-7 of the Rush Town Code. Property is located in an R-30 zoning district.

The Public Hearing for Application 2009-03Z by Steve and Hilary Dzina was held August 13, 2009 and has remained open pending correspondence from the New York State Department of Transportation (NYSDOT). During the month of September, the Dzina's arranged to have a NYSDOT representative come and view the fence at its current location. The Public Hearing for Application 2009-03Z was declared closed at the October 8, 2009 Zoning Board meeting. Dzina's were unable to attend this meeting. The Dzina's stated that they were under the impression that they need to receive permission from the state in order to keep the fence. The Dzina's stated that the response from the NYSDOT indicated that the fence would only be allowed if the Rush Zoning Board approved the variance for the fence. The Zoning Board stated that it's the Rush Town Code that prohibits the fence from the right of way. The Zoning Board stated that they would be willing to approve the fence, however, the panels that are in the right of way must be removed, the remainder may stay. The right of way for Rush Lima Road is 66 feet or 33 feet from center line plus the required 1 foot back from the right of way. The Zoning Board further discussed the letters of correspondence from NYSDOT and the order of events that took place.

NEW BUSINESS:

The Rush Town Board has requested a formal written statement regarding Councilwoman Sluberski's proposal for recreational vehicles.

Chairman Van Lare stated that they have no additions or changes to the comments previously submitted to Town Board. Zoning Board member, Kelly Pruden reiterated that it is a conflict of interest for the Zoning Board to comment or share personal opinions. The Zoning Board deals with appeals based on the current town code and it is their duty to uphold the current town code, not make changes to it. Other board members concurred.

The Zoning Board discussed the status of the rezoning request for 6115 and 6123 Rush Lima Road. A formal request has been submitted to the Town Board by both owners. A Public Hearing is scheduled for November 18, ²⁰⁰⁹ at the Rush Town Board meeting.

DECISIONS:

Application 2009-07Z by Thomas Roth requesting a front setback variance for a proposed addition to the main dwelling. The proposed location does not comply with Rush Town Code §120-19. Property is located at 1839 Rush Scottsville Road and is in an R-20 zoning district.

Al Simon made a motion **WHEREAS**, this Board has examined Application 2009-07Z by Thomas Roth of 1839 Rush Scottsville Road, located in an R-20 district, requesting a setback variance for construction of an addition to the existing house, for the purposes of enlarging the kitchen/eating area and maps and other materials which were filed with the application.

WHEREAS, the application is solely for an area variance, now

BE IT RESOLVED, that this Board determines that it is a Type II 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 Regulation, in listing Type II Actions, includes all variances for relief from granting of individual setback and lot line variances.

Robert Weiler seconded the motion and the Board Members polled:

Roll:	Robert Weiler	aye	
	Amber Corbin	abstained	
	Kelly Pruden	aye	
	Al Simon	aye	
	Don Van Lare	aye	carried.

Amber Corbin abstained from the motion, she was excused from the October 8, 2009 Zoning Board meeting.

WHEREAS, Application 2009-07Z was submitted by Thomas Roth of 1839 Rush Scottsville Road, located in an R-20 district, requesting a setback variance for construction of an addition to the existing house, for the purpose of enlarging the kitchen/eating area, and maps and other materials which were filed with the application.

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 the Application be granted as requested in the plans submitted with the application.

The following conditions apply:

1. The plans will be revised to show a setback of 75 feet from the centerline of the highway (New York State Route 251) to the proposed addition and the plans will be corrected to show a setback of 52 feet from the centerline of the highway (New York State Route 251) to the existing house.

2. The construction of the proposed addition is to be completed within one year of the approval of the application.
3. No work is to commence until a building permit is obtained from the Town of Rush.

The reasons for this action are:

1. The pre-existing, non-conforming house does not adhere to the current setback requirement of 110 feet.
2. There will be no undesirable change in the character of the neighborhood.
3. There is no discernible detriment to the health, safety or welfare of the community or neighborhood that would occur by the granting of these variances.

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

Roll:	Robert Weiler	aye	
	Amber Corbin	abstained	
	Kelly Pruden	aye	
	Al Simon	aye	
	Don Van Lare	aye	carried.

Amber Corbin abstained from the motion, she was excused from the October 8, 2009 Zoning Board meeting.

Application 2009-03Z by Steve and Hilary Dzina requesting a height and location variance for an existing fence on the property located at 6278 Rush Lima Road. The fence does not comply with §58-6 and §58-7 of the Rush Town Code. Property is located in an R-30 zoning district.

Al Simon made a motion **WHEREAS**, this Board has examined Application 2009-03Z Steve and Hilary Dzina of 6278 Rush-Lima Road, located in an R-30 district, requesting a fence height and location variance on the west side of their residence, as indicated in the maps and other materials which were filed with the application.

WHEREAS, the application is solely for an area variance, now

BE IT RESOLVED, that this Board determines that it is a Type II action, which requires no further processing under SEQRA. The reason for this determination is that Section 617.5c (10) of Title 6 of the New York Code of Rules and Regulation, in listing Type II Actions, includes the construction, expansion or placement of minor accessory/appurtenant residential structures, including garages, carports,

patios, decks, swimming pools, tennis courts, satellite dishes, fences, barns, storage sheds or other buildings not changing land use or density.

Robert Weiler seconded the motion and the Board Members polled:

Roll: Robert Weiler aye
 Amber Corbin aye
 Kelly Pruden aye
 Al Simon aye
 Don Van Lare aye carried.

WHEREAS, Application 2009-03Z was submitted by Steve and Hilary Dzina of 6278 Rush-Lima Road requesting a variance from height and location in Rush Code Chapters §58-6 and §58-7, that is, no fence or portions of a fence forward of the rear building line shall be more than four feet in height and that any fence higher than 36 inches shall be placed at least 35 feet from edge of pavement.

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 the application be with the following restrictions and conditions:

1. These variances are granted for the current fence with a height not to exceed 6 feet 3 inches but with the location to be at least 1 foot back from the New York State right-of-way as set forth in the Rush Town Code. (34 feet back from the center line.)
2. The applicant is required to obtain a permit, from the Code Enforcement Officer for the current fence and complete the location modification within 45 days.

The reasons for this action are:

1. The fence will allow for privacy from the commercial property next door.
2. The neighbors have no objection to the fence.
3. There will be no undesirable change in the character of the neighborhood.
4. There is no discernible detriment to the health, safety or welfare of the community or neighborhood that would occur by the granting of these variances.

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

Roll: Robert Weiler aye
 Amber Corbin aye
 Kelly Pruden aye
 Al Simon aye
 Don Van Lare aye carried.

APPROVAL OF MINUTES:

The Minutes of October 8, 2009 were reviewed.

Don Van Lare made a motion to approve the Minutes of October 8, 2009 as submitted.

Robert Weiler seconded the motion and the Board Members polled.

Roll: Robert Weiler aye
 Amber Corbin aye
 Kelly Pruden aye
 Al Simon aye
 Don Van Lare aye carried.

With no further business, a motion was made by Don Van Lare and agreed by common consent that the meeting be adjourned at 8:55 PM.

Respectfully Submitted,

Meribeth Palmer
Deputy Town Clerk