

**RUSH ZONING BOARD OF APPEALS  
REGULAR MEETING  
MINUTES OF FEBRUARY 11, 2010**

A regular meeting of the Rush Zoning Board of Appeals was held on February 11, 2010 at the Rush Town Hall, 5977 East Henrietta Road, and was called to order at 7:00 PM.

**BOARD MEMBERS PRESENT:** Robert Weiler, Deputy Chairman  
Amber Corbin  
Kelly Pruden  
Al Simon  
Meribeth Palmer, Deputy Town Clerk  
**EXCUSED:** Don Van Lare, Chairman

**OTHERS PRESENT:** Gerry Kusse, Code Enforcement Officer  
Thomas Doupe, Zoning Board Liaison  
Bill Riepe, Town Board Member, Resident  
Lisa Sluberski, Town Board Member, Resident  
Naveed Hussain, Property owner  
Charles Hughes, Resident  
Catherine Hughes, Resident  
Majed El Rayess, Architect  
Anne Ford, Resident  
Aaron Donlon, Resident  
James Sickles, Property Owner  
Eliza Meyer, Resident  
David Strong, Resident  
Robert Wolfe, Architect

**PUBLIC HEARING:**

**Application 2010-01Z, 2010-02Z, 2010-03Z** by El Rayess Architects acting as agent for Naveed and Arooj Hussain requesting area, fence and parking variances for a commercial site plan to construct an 8024 square foot, single story building and gasoline filling station located at 5946 East Henrietta Road. Property is located in a commercial zoning district.

Mr. Weiler opened the floor to comments from the public.

Resident Charles Hughes expressed his concerns regarding the expansion of the site plan, hours of operation, the location of the entrance on Rush Mendon Road and the noise in conjunction with the extension of the parking lot to the north east. Mr. Hughes also had questions regarding the utility poles on the site.

Architect Majed El Rayess acting as agent for applicants Naveed and Arooj Hussain responded to the concerns of Mr. Hughes. The foot print of the original building is only increasing by 300 square feet and the building itself will turn slightly toward the south east. This is a minimal increase.

The current code requires 48 parking spaces for the 8024 square foot building. Rather than creating a much larger parking lot, the parking area will be kept to a minimum by reducing the number of parking spaces. A variance has been requested for 34 parking spaces. The increase in the paved area to the north east is to accommodate employee parking and to a create drive through area around the back of the building.

Mr. El Rayess has been working with the New York State Department of Transportation and is proposing to move the parking lot entrance on Rush Mendon Road further east in order to ease the build up of traffic at the intersection of Rush Mendon Road and New York State Route 15A (East Henrietta Road). This should also ease the build up of cars in front of Mr. Hughes's house. Mr. El Rayess stated that the new parking design will be more organized for the residents and will detour the ability of large trucks to park along the east side of the lot and along Rush Mendon Road.

Mr. El Rayess has proposed a solid 6 foot fence on the east side of the property in combination with 7 to 8 foot evergreen trees to act as a buffer. The fence cannot be continuous; it will have a small break to accommodate the culvert on the property. The wooded area directly to the east will not be disturbed.

Mr. El Rayess stated rather than trying to reuse the current dilapidated building he will create a new building that is attractive and an improvement to the area for the town. Mr. El Rayess stated that the building will have similar design elements as the town hall for continuity and to give the area a village like feel. There will not be any pole lighting on the north east side of the property. There will be building mounted lights that point down. Mr. Hussain stated that it will not be a 24 hour operation. Their hours will be the same as Sugar Creek, approximately 5 am to midnight. The garbage pick up area has been moved to the north side of the building to keep additional noise away from the residential area on the east.

Mr. El Rayess addressed the issue of the utility poles. The pole located on Rush Mendon Road will not change. The pole that is located at the building will be removed. The pole located at the edge of the east property line will be replaced with another pole and a small transformer and everything will run underground from there to the building. The utility poles will not affect any of the neighbors' trees.

The Zoning Board reminded the audience that they can only rule on the variances. Many of the issues of discussion are part of the Planning Board's review.

Mr. El Rayess explained the variance requests for the audience.

**Application 2010-01Z** for three area variances:

- One side setback of 47 feet, Rush Town Code 120-12E (5) requires 75 feet. The existing building setback was 65 feet.

- One front setback of 108 feet, Rush Town Code 120-18 requires 140 foot setback. The existing building setback was 108 feet.
- One rear/side setback to the north of 20 feet, Rush Town Code 120-19 requires 25 feet. The existing building was 8.33 feet.

**Application 2010-02Z** for one parking variance:

- Site plan proposes 34 off street parking spaces. Rush Town Code 120-57 requires 48 spaces (6 spaces for every 1,000 square foot of building).

**Application 2010-03Z** for one fence variance:

- Applicants are requesting a variance to build a new 6 foot fence on the southeast side of the property line to provide screening for the residential properties.

There was further discussion with Mr. Hughes regarding the parking on the north east side. Mr. Hussain and Mr. El Rayess stated that they could have the early morning employees park on the west side of the parking lot near East Henrietta Road. This would help to alleviate early morning noise that might occur on the east side of the lot near the Hughes residence.

Robert Weiler declared the Public Hearing closed

**INFORMAL DISCUSSION:**

Robert Wolfe acting as agent for Eliza Meyer appeared regarding possible variances needed for a proposed subdivision and site plan located at 90 Ryder Hill Road. The current existing property is 1.85 acres with an easement for an existing septic system that crosses the property line. The applicant is proposing to subdivide the property into 2 parcels keeping the existing home on 1 parcel and building a new home on the other. The applicant is asking for a side lot line variance in order to keep the existing garage on the new parcel and a variance for the width at front setback. This would allow the natural lawn area to remain with the original house and still keep a 25 foot side setback from the existing storage building located further back on the new parcel. The Zoning Board suggested increasing the side lot line variance to at least 10 feet instead of the 2 feet shown on the preliminary map. The applicant is currently working with Corneles Engineering on the site plan. The applicant would like to locate the home towards the back of the property in the wooded area and this would also allow the septic to be located down slope from the house. The driveway is curved so not to disturb existing trees to the north.

Mr. Wolfe stated that he is looking for an indication or support from the Zoning Board regarding the variance requests.

The Zoning Board had positive comments but cannot make any determinations without a formal application being submitted.

Residents Aaron Donlon and Anne Ford expressed their concern regarding the division of the property and the proposal of another house.

**OLD BUSINESS:**

**Application 2009-04Z** by James Sickles requesting three area variances for the property at 6115 Rush Lima Road. The property width at setback, the minimum structure set back from center line and the side set back of the structure does not comply with R-20 district requirements as set forth in the Rush Town code.

On February 10, 2010 the Town Board passed Local Law 2-2010 for the rezoning of 6115 and 6123 Rush Lima Road from Commercial to Residential. This will allow the Zoning Board to make their decision regarding Mr. Sickles request for area variances on the property located at 6115 Rush Lima Road.

**DECISIONS:**

Robert Weiler made a motion **WHEREAS**, This Board has examined **Application 2010-01Z** by Majed El Rayess for area variances for the construction of a one story structure at 5946 East Henrietta Road, Rush, New York, located in a Commercial District. This applicant is requesting relief from section 120-12E (5), Section 120-18 and Section 120-19 of the Rush Town Code as described in such maps, diagrams and materials submitted with the application, and

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

**BE IT RESOLVED**, that this Board determines that the proposed action is a Type II Action exempt from SEQRA review pursuant to Section 617.5c(c)(12) of Title 6 of the New York Code of Rules and Regulation, which lists as a Type II Action the granting of individual setback and lot line variances.

Al Simon seconded the motion and the Board Members polled:

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

**WHEREAS, Application 2010-01Z** was submitted by El Rayess Architects, 32 Church Street, Pittsford, New York requesting three variances: The first variance from the 75 foot setback requirement for commercial structure adjacent to residential property; the second from a 140 foot front setback requirement from the centerline of state/county highways and the third from a rear setback requirement of 25 feet 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 2010-01Z be granted subject to the following conditions:

1. The setback from the adjacent residential property will be no closer than 47 feet. There shall be a screened buffer zone of at least 20 feet. Such screening shall consist of both fencing and not less than four feet in height and evergreen plantings
2. The west front setback shall be no closer than 108 feet from the center line of New York State Route 15A (East Henrietta Road).
3. The north rear setback shall be no closer than 20 feet from the property line.

The reasons for this action are:

1. The parcel, slightly larger than the required 1 acre minimum, is an irregularly shaped corner lot. In order to maximize parking, the proposed building is close to one property line necessitating variances on two others.
2. The proposed commercial structure would improve the existing condition of the parcel and provide a new retail store to serve the needs of the residents in the neighborhood.
3. There will be no undesirable change in the character of the neighborhood.
4. There is no discernable detriment to the health, safety or welfare of the community that would occur by granting these variances.

Al Simon seconded the motion and the Board Members polled:

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

**The Zoning Board made a decision to rescind the original motion for application 2010-02Z by Majed El Rayess. The following motion is the final motion and supersedes any previous determination.**

Al Simon made a Motion **WHEREAS**, this Board has examined **Application 2010-02Z** by Majed El Rayess, 32 Church Street, Pittsford, New York for an area variance for off-street parking in conjunction with a proposed structure at 5946 East Henrietta Road, Rush, New York, located in a Commercial District. The applicant is requesting relief from Section 120-57A of the Rush Town Code as described in such maps, diagrams and materials submitted with the application, including a Short Environmental Assessment Form, and

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

**BE IT RESOLVED**, that the Board determines that the proposed action is an Unlisted Action pursuant to SEQRA and that the proposed action will not have a potential significant adverse impact on the environment. The Board thus issues a Negative Declaration pursuant to SEQRA since the proposed action will not lead to any of the following consequences:

- A. a substantial adverse change to ambient air or water quality or noise levels or in solid waste production, drainage, erosion or flooding.
- B. the removal or destruction of large quantities of vegetation or fauna, the substantial interference with the movement of any resident or migratory fish or wildlife species, impacts on critical habitat areas, or the substantial affecting of a rare or endangered species of animal or plant or the habitat of such a species.
- C. the encouraging or attracting of a large number of people to a place for more than a few days, relative to the number of people who would come to such place absent the action.
- D. the creation of a material conflict with the Town's existing plans or goals as officially approved or adopted.
- E. the impairment of the character or quality of important historical, archaeological, architectural or aesthetic resources or of existing community or neighborhood character.
- F. a major change in the use of either the quantity or type of energy.
- G. the creation of hazard to human health or safety.
- H. a substantial change in the use, or the intensity of use of land or other natural resources or in their capacity to support existing uses where such a change has been included, referred to, or implicit in an official comprehensive plan.
- I. the creation of material demand for other actions which would result in one of the above consequences.
- J. changes in two or more elements of the environment, no one of which is substantial, but when taken together result in a material change in the environment.

Robert Weiler seconded the motion and the Board Members polled:

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

**WHEREAS**, Application 2010-02Z was submitted by El Rayess Architects, 32 Church Street, Pittsford, New York for property at 5946 East Henrietta Road, Rush, New York, requesting an area variance from the 48 off-street parking spaces required for an 8,000 square foot indoor retail establishment in commercially zoned districts, 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 these statements were considered by the Board, then

**BE IT RESOLVED**, that Application 2010-02Z be granted subject to the following conditions:

1. The number of parking spaces be no less than 34 spaces.
2. All off-street parking areas for more than 5 vehicles that adjoins or faces residential premises must be screened by to evergreen plantings 7 to 8 feet in height and by a fence not less than 6 feet in height.

The reasons for this action are:

1. The small size of the parcel coupled with the area needed for the gasoline pumps and the service islands makes compliance with the required off-street parking impossible.
2. There will be no undesirable change in the character of the neighborhood.
3. There is no discernable detriment to the health, safety or welfare of the community that would occur as a result of this variance.

Robert Weiler seconded the motion and the Board Members polled:

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

Kelly Pruden made a motion **WHEREAS**, this Board has examined **Application 2010-03Z** by Majed El Rayess for a Fence Variance in conjunction with a proposed structure at 5946 East Henrietta Road, Rush, New York, located in a Commercial District. The applicant is requesting relief from Section 58-6 of the Rush Town Code as described in such maps, diagrams and materials submitted with application, and

**WHEREAS**, the application is solely for a fence variance, now

**BE IT RESOLVED**, that the Board determines that the proposed action is a Type II Action exempt from SEQRA review pursuant to Section 617.5(c)(10) of Title 6 of the New York Code of Rules and Regulations since the proposed action entails the granting of individual lot line or setback variances.

Amber Corbin seconded the motion and the Board Members polled:

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

**WHEREAS**, Application 2010-03Z was submitted by El Rayess Architects, 32 Church Street, Pittsford, New York requesting a variance from the height requirement in Rush Code Chapters 58-6 which state “no fence or portions of a fence forward of the rear building line shall be more than four feet in height” as described in such maps, diagrams and materials submitted by 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 these statements were considered by the Board, then

**BE IT RESOLVED**, that Application 2010-03Z be granted subject to the following conditions:

1. The proposed fence, to be constructed inside the southeast property line, is not to exceed six (6) feet in height.
2. The proposed fence is to be constructed of a solid surface, i.e. wood or vinyl, and have the smooth side or finished side facing to the outside of the property.
3. The applicant is to obtain a fence permit from the Rush Building Inspector prior to the installation of the fence.

4. The applicant is to meet the requirement set forth by the Monroe County Department of Planning and Development Review Committee and the New York State Department of Transportation as detailed in their review letter dated February 2, 2010.

The reasons for this action are:

1. The fence is intended to provide additional screening to residential properties southeast of the proposed structures.
2. There will be no undesirable change in the character of the neighborhood.
3. There is no discernable detriment to the health, safety or welfare of the community that would result by granting this variance.

Amber Corbin seconded the motion and the Board Members polled:

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

Amber Corbin made a motion **WHEREAS**, this Board has examined Application 2009-04Z, submitted by Hardwood Properties LLC, 6115 Rush-Lima Road, located in a Residential District (R-20), requesting front and side setback variances and width setback variance, for an existing dwelling, 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.”

**WHEREAS**, Application 2009-04Z was submitted by Hardwood Properties LLC, 6115 Rush Lima Road requesting three variances: the first variance from the side setback requirement of fifteen (15) feet for structures as set forth in the Code of Rush, Chapter 120-19 on the east side of the property, and the second variance from a front setback requirement of one hundred-ten (110) feet for structures from the highway centerline, as set forth in the Rush Town Code, Chapter 120-18, and a third variance from the minimum width at setback of one-hundred (100) feet at setback for structures as set forth in the Rush Town Code, Chapter 120-17, as described in the maps and diagrams submitted with the application, and

**WHEREAS**, a Public Hearing on this application was scheduled and notice was posted as required by law, and

**WHEREAS**, all persons at the hearing desiring to speak on the matter were heard, all correspondence was read and those statements were considered by this Board, then

**BE IT RESOLVED**, that Application 2009-04Z be granted subject to the following conditions:

1. East side setback shall be no closer than seven feet one inches (7'1") from the east side lot line.
2. Front setback shall be no closer than eighty-seven feet six inches (87'6') from the highway center line.
3. Property width at setback shall be not less than sixty-seven feet (67')

The reasons for this action are:

1. Current structure is a non-conforming pre-existing dwelling built circa 1900.
2. This single family dwelling was unoccupied for one year or more and this requires area variances to bring it into compliance (Section 120.63B).
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.

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

Respectfully Submitted,

Meribeth Palmer  
Deputy Town Clerk