

**RUSH ZONING BOARD OF APPEALS
PUBLIC HEARING & WORKSHOP
UNAPPROVED MINUTES
NOVEMBER 10, 2005**

A regular meeting of the Rush Zoning Board of Appeals was held on November 10, 2005 at the Rush Town Hall, 5977 East Henrietta Road, and was called to order at 7:00 P.M.

BOARD MEMBERS PRESENT: Mr. Don Van Lare, Chairman
Mr. Robert Weiler
Mr. David Eddy
Mr. Dan Taylor

EXCUSED: Mrs. Amber Corbin

OTHERS PRESENT: Gerald Kusse, Code Enforcement Officer.
K. Donald Fosnaught, 2123 Rush Mendon Rd.
Laura Baranes, Pride Signs, 2340 Br. Hen TL Rd
Scott Pundt, Dorschel Automotive
Tom Magill, Sickles Corp.

PUBLIC HEARING:

Application 2005-08 Z by K. Donald Fosnaught for a Fence Variance to construct a 5' high x 180' long, wooden stockade fence along the west property line. A portion of the fence will be forward of the rear foundation line. Property is located at 2123 Rush Mendon Road. Property is located in an R-30 Zoning District.

Mr. Fosnaught stated that his reason for asking for the variance was to protect the value of his property.

Mr. Taylor described the condition of the adjacent property when he went to visit and review the Application with Mr. Fosnaught.

Mr. Kusse stated that there were multiple violations of the New York State Code on the adjacent property.

The Board Members discussed with Mr. Fosnaught his reasons for wanting to turn the fence so the finished side faces his property.

The Board Members discussed the Application.

Mr. Van Lare read the letter/comments from:

1. Monroe County Department of Planning & Development, Monroe County Development Review. This Application was referred as a Local matter.

There were no further comments and Mr. Van Lare declared the hearing closed.

WORKSHOP:

Application 2005-07 Z by Pride Signs acting as Agent for Richard Dorschel for a Sign Variance to construct a 10'x12'x 25' high internally illuminated double-pole pylon sign and message center. The Zoning Board will review expired signs as well as this Application. Property is located at 7283 West Henrietta Road. Property is located in a Commercial Zoning District.

There was a discussion regarding the square footage of the existing signs on the property. Ms. Baranes stated that Mr. Dorschel would remove the sign on the west side of the building. The west side of the building currently faces the I-390 expressway exit ramp.

The Clerk will add to the following to the Legal Notice for the December Public Hearing:

- The Zoning Board will additionally consider renewal of the expired signs as well as this Application.

The Board Members asked the Applicant if they would lower the height of the proposed free standing sign to 21 feet. There was a discussion regarding the verbiage for the message center, asking the Applicant to limit it to the business related messages unless approved by the Board.

Application 2005-09 Z by Mark & Donna Meyer for a Variance to build a home with the height of 45 feet which exceeds the Zoning Ordinance limit of 35 feet. The proposed house will be located on Lot #32 of Boulder Creek Drive. Property is located in an R-30 Zoning District.

Mr. Van Lare read a letter from the Town of Rush Fire Marshall regarding the Application submitted by Mr. & Mrs. Meyer. Mr. Rinere stated that he would like to see a residential sprinkler system installed in the proposed home.

The Board Members discussed with Mr. Magill (Project Manager for the Applicant) the materials to be used for the construction of the proposed home, as well as fire walls within the structure.

APPROVAL OF MINUTES:

The Minutes of October 13, 2005 were reviewed.

Mr. Van Lare made a Motion to approve the Minutes of October 13, 2005 as amended. Mr. Eddy seconded the Motion and the Board Members were all in agreement.

APPLICATION ASSIGNMENT:

Mr. Van Lare and Mr. Eddy have been assigned **Application 2005-09 Z** by Mark & Donna Meyer.

Mr. Van Lare has been assigned **Application 2005-07 Z** by Rush Associates LLC.

DECISION:

Mr. Taylor made a Motion **WHEREAS**; this Board has examined **Application 2005-08 Z** by K. Donald Fosnaught of 2123 Rush Mendon Road, located in an R-30 Zoning District, requesting height and finished side variances for a 180' fence to be located along the western property line, together with site plan and photographs submitted with the application. **WHEREAS**, the Application is solely for the variances as cited above, 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 Regulations, in listing Type II Actions, includes "construction of fences".

Mr. Eddy seconded the motion and the Board Members polled:

Roll:	Mr. Taylor	aye	
	Mr. Eddy	aye	
	Mr. Weiler	aye	
	Mr. Van Lare	aye	carried.

WHEREAS, **Application 2005-08 Z** was submitted by K. Donald Fosnaught of 2123 Rush Mendon Road requesting a Variance to place a five foot high fence forward of the rear building line. Chapter 58 Section 6 of the Code of Rush prohibits fences in any Zoning District forward of the rear building line to have a height greater than four feet.

The Application further requests a Variance to construct the fence in such a way that the "finished side" will be on the Applicant's side and the posts will be on the side of the adjacent property. Chapter 58 Section 12 of the Code of Rush prohibits such a placement and requires the reverse installation.

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 the Application be granted with the following conditions:

1. The fence shall be constructed in accordance with the drawing attached to and made a part of the application.
2. No work is to be commenced until a Fence Permit is obtained from the Town of Rush.
3. The fence will be constructed within one year of this hearing.

The reasons for this action:

1. Applicant suffers a diminishment of the value of his property and enjoyment of his occupancy due to the extraordinary character of the adjoining property. Screening of the line of sight will give Applicant a measure of relief.
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 this variance.

On the Motion to approve the Fence Variance.

Mr. Van Lare seconded the motion and the Board Members polled:

Roll:	Mr. Taylor	aye	
	Mr. Eddy	aye	
	Mr. Weiler	aye	
	Mr. Van Lare	aye	carried.

On the Motion to approve the finished side of the fence to be on the Applicants side and the posts to be on the side of the adjacent property.

Mr. Van Lare seconded the motion and the Board Members polled:

Roll:	Mr. Taylor	aye	
	Mr. Eddy	aye	
	Mr. Weiler	nay	
	Mr. Van Lare	aye	carried.

There were no further discussions and the Meeting was adjourned at 8:30 P.M.

Respectfully submitted,

Darlene Pilarski
Deputy Town Clerk