

**RUSH ZONING BOARD OF APPEALS
REGULAR MEETING
MINUTES OF NOVEMBER 13, 2008**

A regular meeting of the Rush Zoning Board of Appeals was held on November 13, 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
Kelly Pruden

OTHERS PRESENT: Lisa Sluberski, Town Board Liaison
Gerry Kusse, Code Enforcement Officer
Werner Wandersleben, Resident
James Bucci, Resident
Michael Quinlan, Resident
Linda Quinlan, Resident
Anthony Leib, Resident
Ralph Keyes, Resident
Andrew Zimmer, Resident
Bernard Spears, Resident
Walter Bittner, Resident

PUBLIC HEARING:

Application 2008-04 Z by Michael and Linda Quinlan of 270 Keyes Road, for an Area Variance to park a boat in front of the main dwelling. The proposed location does not comply with §120-57 G of the Rush Town Code. Property is in an R-30 Zoning District.

Applicant Mr. Quinlan stated that he owns a 20 foot fiber glass boat and trailer. He is requesting a variance to park it in his driveway from May to October on a yearly basis. Mr. Quinlan stated that he is unable to park it behind the main dwelling due to trees, propane tanks and a fence on the north side of the house. On the south side of the house is a raised bed septic system that he is unable to drive over. Mr. Quinlan stated that 13 years ago when he moved in he inquired about having a boat and was told it was acceptable unless a complaint was made. He also stated that the trees were approximately 30 feet tall when he moved in and he does not want to cut them down. The Quinlans also installed the propane tanks shortly after moving in.

Audience comments:

Resident Andy Zimmer inquired as to why the code reads the way it does. Don Van Lare responded that it was originally created because people in various parts of town do not like seeing boats and recreational vehicles in the front yards. Andy also wanted to know what it would take to have the code changed. Mr. Van Lare stated that the Town Board would need to be petitioned along with a formal request to the Town Board to review the matter.

Resident Jim Bucci stated that a petition had recently been submitted to the Town. Mr. Bucci asked the Zoning Board if the Town Board initiates or requests the Zoning Board to review the matter. Mr. Van Lare stated that changing the code is a Town Board matter. The Zoning Board may be asked for their opinion, however, the Zoning Board does not make the decisions. The Town Board would need to make a resolution and have public hearing to change the town code. Mr. Bucci also stated that Rush being a rural area, there should be some flexibility for those who do not have property suitable for backyard storage of boats and recreational vehicles.

Mr. Quinlan stated that none of his neighbors at this time object to the boat being parked in the driveway and only one neighbor can really see it. Mr. Van Lare replied that a variance is good for as long as a resident owns the property. Someone moving in after the variance may not want a boat there. Mr. Quinlan asked if the board ever issues variances. The Board responded that history shows many other kinds of variances have been given, just not variances for boats in front yards or driveways. Dan Taylor made a suggestion of using 2 x 10 boards to alleviate compression in order to pass over the septic system area. Another suggestion would be to move the propane tanks back.

Resident Walter Bittner asked the Zoning Board about visitors with motor homes. There are provisions in the code for this type of situation. Robert Weiler stated that a boat in the driveway for a day or two is not a problem. However, a long term or the entire summer is what the board is addressing.

Mrs. Quinlan stated that after receiving the violation letter they came forward and have taken responsibility by submitting an application for a variance. Mrs. Quinlan also stated that they checked with the surrounding neighbors, who are not opposed to the current location of the boat and Mrs. Quinlan feels they have provided sufficient reasons as to why they can comply with the code. She also restated that they have been told by experts that the septic area can not be driven over so that is not an option.

Amber Corbin replied that their job is to uphold the laws of the town and listen to each application individually and make their decision. History may show that this type of variance may not have been approved in the past but each application is

voted on and there is no way of knowing ahead of time how each board member will vote.

Resident Anthony Leib explained that he does not object to boats but he does object to violations in front yards. He works hard to keep his property neat and clean and feels that if there are laws in place they should be followed.

Dan Taylor, in an effort to find a solution for Mr. Quinlan asked about cost and possibility of moving the propane tanks straight back in order to fit the boat on the side of the house. Mr. Quinlan stated that might work but he would be within the side set back. Mr. Quinlan stated that he would be willing to move the tanks as long as he did not have to cut down any trees.

Resident Bernard Spears commented that he lives next door to Mr. Quinlan and that he was the original owner of the property that presently belongs to Mr. and Mrs. Quinlan. Mr. Spears stated the history behind the septic system placement and also stated that he can't see the boat from his property.

Mrs. Quinlan stated that a boat in the driveway should not be compared to other issues that occurred in the neighborhood such as a large 18 wheeler box in a front yard or a cell tower in the neighborhood.

Resident Ralph Keyes conveyed that boats are more common now and should be treated no differently as cars in a driveway. Mr. Keyes stated that he does not understand this type of zoning.

Resident Werner Wandersleben asked the board to consider this application or consider this as an exception that is valid based on the information presented.

Resident Jim Bucci suggested that providing a variance with a time limit of 1 or 2 years or expiration date allowing the board to periodically revisit the application.

Don Van Lare stated that 1 or 2 year variances are not an option, they are valid forever.

CORRESPONDENCE:

Don Van Lare entered into the record that Monroe County Planning and Development has referred to this application as a local matter.

Don Van Lare also noted the neighbors listed in the application stating that they have no problem with the applicant's request.

Don Van Lare declared the hearing closed.

WORKSHOP:

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 was not aware that he needed a permit or a variance for the furnace. Don Van Lare stated that the furnace not only violates the side setback, it violates the front setback and the neighbors are complaining. Mr. Wandersleben stated that he placed the furnace where he thought it would be visually hidden. The furnace is 18 feet from the side lot line. The garage is 75 feet from the front property line. If the furnace is moved to the other side of the garage it will be fully visible from the road. If the furnace were to be moved behind the house it will be 140 feet closer to the neighbor's house and the trees will have to be cut down. The neighbor will then have no visual barrier and diminished privacy. Mr. Wandersleben said he would be willing to extend the stack up another 8 feet which would force the smoke up higher and help to get it out of the area. The complaints regarding the furnace have been about the smoke produced. Mr. Wandersleben stated that wherever he moves the furnace there is going to be smoke. Some people feel there is a concern because the furnace is such a large unit. The wood is also stacked in along the tree line and the wood is very dry this year. Mr. Wandersleben likes the fact that this unit is away from the house. Previously there were two wood burning fire places in the house and there was always a potential for a fire hazard. Moving the furnace away from the house is safer for the family and if any thing were to happen it would only be property loss and not life loss.

Mr. Wandersleben will be scheduled for public hearing next month and a board member will be assigned to the application.

BOARD DISCUSSION:

The Zoning Board discussed the Quinlan application further and the zoning laws that the board is required to follow. They also discussed the options available for the applicant.

The Zoning Board also discussed the upcoming meeting for the proposed sign ordinance draft. The date will be set for sometime in January and the board will be notified. There was also a legal response from the town attorney regarding training.

DECISIONS:

Don Van Lare made a Motion **WHEREAS**, this Board has examined Application 2008-04Z by Michael and Linda Quinlan, requesting an Area Variance for property at 270 Keyes Road, Rush, New York, located in an R-30 District,

requesting relief from section 120-57G, to park boats and boat trailers forward of the main structure and within space between the property lines and the required front and side setback lines, as described in such map 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 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. +

Amber Corbin seconded the motion and the Board Members polled:

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

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 denied for the following reasons:

1. The Town Code allows outdoor boat trailers, travel trailers and similar vehicles but not within the space between the property line and the front, side or rear setback lines. Additionally, in residential districts, the vehicles and vessels are permitted only in the rear of the main structure. The applicants request not only would place the boat and trailer in front of the main structure but also between their property line and the front possibly the side setback.
2. The applicants property is nearly 2 acres in area, with a majority of the parcel behind the main residence, yet the applicants claim unnecessary hardship in placing the boat behind their house.
3. The benefit sought by the applicants could be achieved by other methods typical for storing boats, such as the use of commercial storage, barn locations or dockage.

4. Allowing boats, trailers, or recreational vehicles to remain in the front yards of residential properties for long periods of time, as an area variance would permit, is detrimental to the character of the neighborhood.
5. The difficulty is self created.

Dan Taylor seconded the motion and the Board Members polled:

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

APPLICATION ASSIGNMENTS:

The Wandersleben Application has been assigned to Amber Corbin and Kelly Pruden.

APPROVAL OF MINUTES:

The Minutes of October 9, 2008 were reviewed.

Don Van Lare made a motion to approve the minutes of October 9, 2008 as submitted.

Robert Weiler seconded the motion and the Board Members polled:

Roll:	Robert Weiler	aye	
	Dan Taylor	abstained	
	Amber Corbin	aye	
	Kelly Pruden	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 8:28 PM.

Respectfully Submitted,

Meribeth Palmer
Deputy Town Clerk

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