

**RUSH ZONING BOARD OF APPEALS  
REGULAR MEETING  
MINUTES OF MAY 13, 2010**

A regular meeting of the Rush Zoning Board of Appeals was held on May 13, 2010 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  
Kelly Pruden  
Amber Corbin  
Meribeth Palmer, Deputy Town Clerk

**EXCUSED:** Al Simon

**OTHERS PRESENT:** Thomas Doupe, Town Board Liaison  
Gerry Kusse, Code Enforcement Officer  
Lisa Kester, Resident  
Chad Kester, Resident  
Susan Swanton  
Norma A. Polizzi, Esq.

**INFORMAL DISCUSSION:**

Lisa Kester appeared before the Zoning Board to discuss a use variance for a landscape business, equipment presently being stored on their property. Ms. Kester is hoping to avoid having to obtain a use variance by moving some of the equipment. Currently trailers with landscape equipment and plows are on the property. The Zoning Board explained to Ms. Kester that the Rush Town Code does not permit commercial businesses to operate in residential districts. Use variance applicants need to show that the property cannot be used for which it was intended, that a reasonable rate of return cannot be obtained and that the circumstances are not self created. It was discussed that storing the equipment elsewhere would be the best solution. Ms. Kester asked what could remain at the residence. A maximum of 2 three quarter ton trucks without commercial signage are allowed on the property. Plows are acceptable if they are attached to the trucks.

Susan Swanton and Norma Polizzi, Esq., appeared to discuss the possibility of a seasonal bed and breakfast business. Ms. Swanton is looking at a property in Rush and would like to know prior to purchasing if a bed and breakfast will be allowable. Ms. Swanton stated that New York State Law makes a distinction between bed and breakfast homes and bed and breakfast inns. A bed and breakfast with 5 or more rooms is considered an inn; 4 rooms and under are considered homes. Ms. Swanton is proposing 4 rooms maximum. 4 parking spaces would be required to accommodate the guest rooms, 1 space for the owner and 1 space for vendors. Ms. Swanton stated that there is plenty of room

on the property to provide parking. Chairman Van Lare read the permitted accessory uses from the Rush Town Code and the Zoning Board discussed the portion of the code that refers to customary home occupations. The code states that the accessory use for customary home occupations shall occupy no more than 25% of the gross floor area for that use. In addition, vehicle traffic would have to be no more than what is normally anticipated in a residential district. Ms. Swanton stated that more than 25% of the home would be used for the business. Therefore the customary home occupation would not apply. Ms. Swanton also stated that she may need to contract out for snow plowing, lawn care, and a possible part time cleaning person. Chairman Van Lare listed some alternatives routes to explore:

- Request the Town Board to change the current code (section 120-7B) to include bed and breakfast homes in residential areas.
- Request the Town Board to rezone the parcel, however, spot zoning is not favored and can present issues.
- Use Variance by the owner showing a monetary hardship, that the property cannot be used for what it is intended for and that it is not a self created hardship.

Ms. Swanton also discussed signage. She has been provided the new sign ordinance for review.

Gerald Kusse, Rush Code Enforcement Officer, discussed the fact that the road is privately owned and maintained; there may be issues with public traffic on a private road.

#### **BOARD DISCUSSION:**

The Zoning Board discussed wind generators. Chairman Van Lare stated that he will be attending the Genesee/Finger Lakes Regional Planning Council's workshop on wind energy.

Chairman Van Lare commented that the current zoning ordinance only regulates buildings over 35 feet in height. Chairman Van Lare has suggested that the ordinance be changed to state the word "structures" rather than "buildings". This would allow the Zoning Board to regulate any structure over 35 feet, such as signs, wind turbines, poles and any other structure that might be proposed.

Councilman Doupe informed the Zoning Board that the Town Attorney is currently reviewing the requested change to the Rush Town Code regarding maximum building height.

**APPROVAL OF MINUTES:** April 8, 2010

Robert Weiler made a motion to approve the Minutes of April 8, 2010.

Kelly Pruden seconded the motion and the Board Members polled.

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

Amber Corbin was excused from the April 8, 2010 meeting.

With no further business, a motion was made by Don Van Lare and agreed by common consent that the meeting be adjourned at 8:15 PM.

Respectfully Submitted,

Meribeth Palmer  
Deputy Town Clerk