

**RUSH PLANNING BOARD  
REGULAR MEETING  
JUNE 19, 2012**

A regular meeting of the Rush Planning Board was held on June 19, 2012 at the Rush Town Hall, 5977 East Henrietta Road and was called to order at 7:30 PM.

**MEMBERS PRESENT:** John Felsen, Chairman  
Scott Strock  
Rick Wurzer  
Pamela Bucci, Town Clerk

**EXCUSED:** John Morelli  
Don Sweet

**OTHERS PRESENT:** Nick Donofrio, Resident  
Patty Hunt, Resident  
Charlie Hunt, Resident  
Sally Newell, Resident  
Frances Rapport, Resident

Chairman Felsen welcomed all to the Planning Board meeting.

**APPROVAL OF MINUTES:**

Chairman Felsen stated that the approval of the May 15, 2012, Minutes would be placed on the next meeting agenda when there is a voting quorum present. Member Rick Wurzer was excused from the May 15, 2012, meeting, and therefore, a quorum was not present at this meeting.

**PUBLIC HEARING:**

Town Clerk Bucci read the following public hearing notice which was published as required and the Public Hearing commenced.

**Application 2012-03P** by Thomas and Lori Sorber of 100 Biondo Court requesting a special use permit to run a dog daycare/home boarding business from their home. Proposed use does not comply with §120-A of the Rush Town Code. Property is located in an R-30 Zoning Code.

Thomas Sorber stated that their daughter Katie was born premature and has learning disabilities, however, her strength is loving animals. She has completed her life skills classes from Rush Henrietta and a dog business will provide her a future. A maximum of 2 to 3 dog daycare/home boarding business is requested.

Mr. Sorber explained that they sought a variance to build outside the setbacks of the town Code and it was granted by the Zoning Board of Appeals in July 2011. Specifics for the space were not determined, therefore, a special use permit was not discussed. The addition includes a 16x30 room to the east which provides space for Katie's dog business.

The Sorbers have 1 dog.

Chairman Felsen requested detail of the inside and outside requirements of the proposed business. Mr. Sorber explained that there is a 16x30 room. A fenced-in area, such as a small kennel run, will be installed in the future to provide a waste area for the dogs. Waste would be placed in a bag then put into the garbage; wide slat fencing will be used. Dogs would be out freely in the fenced area but walked on a leash in other areas outdoors. The business would be open 24 hours/7 days a week.

Chairman Felsen asked if a copy of the zoning code was presented to the Sorbers and also read excerpts of Residential Districts §120-7b of the Code, §120-69, referencing commercial stables and kennels and continued to read Planning Board §120-69D in its entirety regarding special permitted uses so that the Sorbers was fully aware of the requirements in obtaining a special use permit.

Chairman Felsen asked the Board for further questions before the audience provided input.

Member Scott Strock asked for clarity of the intended use of the outdoors for the dogs, including a dog run and fences to the east. Mrs. Sorber stated that there is currently a fence surrounding the pool. A fence may be placed to the east, enclosed in a rectangular shape. Mrs. Sorber pointed to the map area and where the fence would be in relation to the back corner of the addition and the hot tub.

Chairman Felsen stated that Nick Donofrio of Delia Trail submitted a letter in opposition of the special use permit.

The Conservation Board found that there were no environmental concerns and that if approved the permit should be restricted to 2 to 3 dogs as noted in the application.

Chairman Felsen stated that Monroe County Department of Planning and Development (MCDP&D) deemed the application as a local matter.

Chairman Felsen proceeded to open the floor for comments from the audience.

Nick Dinofrio asked for clarification of state and local matters. Chair Felsen explained that all applications for rezoning or subdivisions are required to be submitted to the MCDP&D for review and approval and in this case, it does not require state review.

Mr. Donofrio stated that he is not a dog owner, is an advocate of businesses, and that it is not a personal matter. Rush is known as a quiet town and the Biondo Court/Delia Trail neighborhood is also quiet. After speaking to a realtor, their perspective was that operating a dog day care business would decrease the property value and would have a negative impact on resale of properties. Also, there may be barking noise from dogs not in their normal environment; asked of sound proofing within and outside the new addition was provided. Mr. Donofrio believed that it would disrupt the quality of life in the neighborhood and that the well-being of the established neighborhood should take precedence over approving a special use for a commercial business. A residential area is not the correct location for a dog daycare/kennel operation. In addition, advertising and additional cars would be coming into the neighborhood. There are currently 10 acres of land still to be developed and a commercial business may serve as a deterrent for future purchasers.

Mr. Sorber stated that the addition that would be housing the day care has been well insulated.

Patricia Hunt, 20 Delia Trail, stated that she is in favor of the dog daycare/boarding at 100 Biondo Court. The property is beautiful; her own dog has been cared for by Katie Sorber and she would welcome the business.

Charlie Hunt, 20 Delia Trail, is in favor of a dog day care/dog boarding business. The backyard of the Sorbers is well maintained.

Sally Newell of 35 Delia Trail is a dog-lover, understands the opportunity that the Sorbers are trying to provide for their daughter and commends them for it, however, the application for special use permit is for a commercial business in a residential area and is a concern. Ms. Newell questioned the intended use of the granted variance for the addition. Other neighbors are aware that there was an intended use at the time of the approved variance. Ms. Newell is concerned about the barking, appropriate fencing for numerous dogs in a small area and the number of dogs allowed at any given time including the enforcement of the permit. Ms. Newell also stated that dog boarding/dog kennels and dog daycares should provide for a large fenced in area for dogs to

play in. Ms. Newell also inquired about rabies vaccination and insurance. An additional concern is that once 1 special use permit for commercial use is granted in the neighborhood, it opens the door for additional special use permits.

Mrs. Sorber stated that although they knew the addition may include something to do with animals, an exact use was not known at the time the variance was approved.

Chair Felsen stated that once the intent of the business is established, the Code Enforcement Officer has the obligation of enforcing the special use permit guidelines when violations occurred.

The Board asked for specifics of the operation. Mrs. Sorber stated that the business would be open 24 hours a day, 7 days a week with a maximum of 2 dogs at any given time. Proposed fencing, which is not presently decided upon, would most likely include privacy vinyl slated fencing.

Mrs. Sorber added that they have exhausted job options for their daughter; jobs are scarce.

Mrs. Rapport, although not present during the entire meeting, has no opposition to the dog day care/boarding operation as proposed.

Chair Felsen also has a dog, is concerned for the closeness of the neighbors.

Scott Strock is pro-business, however, has concerns. The Biondo Court/Delia Trail neighborhood track is well-maintained. Owning 25 acres himself versus a smaller property, a commercial use is most likely not planned for the area in question. There is no limit to the number of dogs one may have in the Town of Rush.

Rick Wurzer believes that the adjoining properties are too close to grant a commercial special use permit.

Chair Felsen stated that the Code does allow for commercial business in a resident area.

Mrs. Hunt asked if the Board decided not to approve the application, is it legal to have Katie watch their dog. The Board concluded that it is a personal preference.

With no further comment, the hearing was declared closed at 8:15 PM by Chair Felsen.

**DECISIONS:**

John Felsen made a Motion **WHEREAS;** this Board has examined **Application 2012-03P** by Thomas and Lori Sorber, 100 Biondo Court, requesting a special permit to run a dog daycare/home boarding business from their home. This is a Type II action. The parcel is in an R-30 zoning district and the maps and other materials were filed with the application, and

**WHEREAS,** the proposed action is a Type II action under the State of New York SEQR laws requiring no further environmental review or action by this Board.

Scott Strock seconded the motion and the Board Members polled:

Roll:	Rick Wurzer	aye	
	Scott Strock	aye	
	John Felsen	aye	carried.

John Felsen made a Motion to deny the approval of **Application 2012-03P** by Thomas and Lori Sorber, 100 Biondo Court requesting a special permit to run a dog daycare/home boarding business from their home. Reasons for the denial are as follows:

1. It does not fit within the existing neighborhood.
2. There may be a problem of noise associated with the dogs and or boarding, thereof.

Rick Wurzer seconded the motion and the board polled.

Roll:	Rick Wurzer	aye	
	Scott Strock	aye	
	John Felsen	aye	carried.

**INFORMAL BUSINESS:**

Mr. Hunt questioned the granting of other special permits. Mr. Hunt also inquired about Townline Garage at 5970 East Henrietta Road, present for over 10 years, was now cited for violations and inquired about the status of the former "Big M" property at 5946 East Henrietta Road. Mr. Hunt asked why the town was not more diligent in filling the vacancy and in correcting the lack of present curb appeal. Mr. Hunt also inquired about the status of the former "Dorschel" property, 7283 West Henrietta Road, and why the town was not moving on finding a business for the property.

Chair Felsen stated that the questions pertain to specific Code Enforcement issues and issuing special use permits subject to rules in Town Codes that have

since been updated for those businesses or properties that do not conform to the current adopted Town Code. Previously awarded permits stand whether or not there is a change in Code. The Code Enforcement Officer is obligated by oath to enforce and follow through with complaints presented to him.

Chair Felsen stated that the Planning Board, approximately 3 years ago, approved the plans of the former "Big M" property located at 5946 East Henrietta Road and this year approved plans for the former "Dorschel" property at 7283 West Henrietta Road which is now owned by others and signs are being erected for an Exit 11 Auto business. Previous administration has worked diligently in assisting the present owners of 5946 East Henrietta in finding financing and available programs to help them begin their approved plan. The Town has enforced the Code for these properties to the extent possible.

Town Clerk Bucci stated that anyone interested in the status of a property is welcome to file a freedom of information form. The Town Board has recently approved the availability of the Town Code to the public through the town website.

Chair Felsen stated that Supervisor Anderson has requested input from both the Planning and Zoning Boards on whether or not to develop a Citizens Committee to review and possibly revise the current Town Code. Currently, in order for a provision of the Town Code to change by the citizens, a Petition must be filed with the Town Clerk, then circulated to the Town Board. The Town Board makes decides whether or not to proceed to a public hearing and thereafter vote on creating a Local Law.

The Planning Board was in agreement with the audience in wanting commercial properties in town to be filled with businesses and does welcome businesses.

Mr. Sorber asked the audience if they would have concerns with their daughter continuing to watch other's dogs in their home from time to time. The consensus was that it is a hypothetical question. Mrs. Newell suggested that Katie work with a local veterinarian.

**BOARD BUSINESS:**

Chair Felsen stated that the Planning Board would respond, on or before June 26<sup>th</sup>, individually to Supervisor Richard Anderson's request of the formation a Citizen's Committee to review areas of the Town Code.

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With no further business, a motion was made by John Felsen and agreed by common consent that the meeting be adjourned at 8:30 PM.

Respectfully Submitted,

Pamela J. Bucci  
Town Clerk