

**RUSH PLANNING BOARD
REGULAR MEETING
MINUTES OF OCTOBER 16, 2012**

A regular meeting of the Rush Planning Board was held on October 16, 2012 at the Rush Town Hall, 5977 East Henrietta Road and was called to order at 7:30 PM.

MEMBERS PRESENT: John Felsen, Chairman
John Morelli
Don Sweet
Rick Wurzer
Scott Strock
Meribeth Palmer, Deputy Town Clerk

OTHERS PRESENT: Councilman Bill Riepe, Town Board Liaison
Gerry Kusse, Code Enforcement Office, Resident
Todd Ewell, Town Engineer
Steve Wisnowski, Land Owner
Shannon Wisnowski, Land Owner
Nicole Wurzer, Resident
Jim Missell, Land Surveyor
Kyle Stevens, Resident, Business Owner
Gavin Burke, Resident

Chairman Felsen welcomed all to the Planning Board meeting and reminded everyone to sign in.

APPROVAL OF MINUTES:

The Minutes of September 18, 2012 were reviewed.

Corrections made as follows:

Page 1 add Don Sweet to members present. Page 1, bottom paragraph, line 2, change mileage to .40. Page 2, paragraph 1, line 2 add the word "house" prior to site location. Paragraph 3, line 2 add the word "house" prior to location and add "The leach field and" to the beginning of the next sentence. Under decisions, #2, add "of the leach field" after the word location.

John Morelli discussed paragraph 1 of Board Business regarding the submission of a revised sight plan for the location of 7272 West Henrietta Road. Although it was previously discussed that the sight plan could be submitted without appearing before the Board, the Board stated that due to the daily changes at the site it would be beneficial if the owners appeared in person to facilitate any questions that may come forth.

Don Sweet made a motion to accept the minutes of September 18, 2012 as amended.

John Morelli seconded the motion and the Board Members polled:

Roll:	John Felsen	aye	
	John Morelli	aye	
	Don Sweet	aye	
	Rick Wurzer	abstained	
	Scott Strock	aye	carried.

Rick Wurzer was absent from the September 18, 2012 Planning Board meeting.

PUBLIC HEARING:

Application 2012-05P by Jack Moore requesting subdivision approval to combine approximately 57 acres into 3 lots. Proposed lot 1 includes an existing house with 1 acre located at 6436 Rush Lima Road. Proposed lot 2 contains remaining 47.9 acres of vacant land. Proposed lot 3 includes an existing house and lot with a total of 9.160 acres located at 6416 Rush Lima Road. All parcels are in an R-30 zoning district.

Land Surveyor Jim Missell appeared on behalf of Jack Moore. The property is approximately 57 acres. Mr. Moore would like to create a 1 acre parcel around the existing residence, grant 8 acres to the Griffin parcel and the remaining lands would continue to be farmed. Mr. Missell has indicated Federal Emergency Management Agency (FEMA) flood plain areas on the plan.

Chairman Felsen informed Mr. Missell that any time there is a designated stream on a plan the Town of Rush requests an easement to the town wide drainage district. Easements are 20 feet either side from top of bank.

Board member Scott Strock inquired and it was clarified that all 3 changes on the site plan would be completed at once.

The Board also inquired about the width of the proposed lots along the road; the footage did not seem to be accurate. Mr. Missell explained that the state road curves and the map indicates 2 items: Point of Tangency (PT) and the Point of curvature (PC). The PC is where the curve starts and the PT is where the curve ends. The curvature on the map shows a PC of 124.27 and a PT 117.27 for a total of 241.54 feet of frontage for the section in question.

The Board also discussed the east lot line of the Griffin parcel. The map indicates a set back from the garage to the side lot line of 14 feet 3 inches. Deputy Town Clerk Palmer stated that the Griffin parcel was given a side set back variance for the garage addition in 2009 from the Zoning Board of Appeals.

Todd Ewell requested ad-joiners names and tax map numbers for the south side of NYS Route 15A be added to the map. In addition, the owner and town engineer signature lines are not required.

It was also clarified that the flood plains are not the same as wetlands that require a 100 foot buffer they simply indicate flood zones set forth by FEMA.

With no further questions or comments Chairman Felsen declared the public hearing closed.

INFORMAL DISCUSSION:

Stephen and Shannon Wisnowski requesting approval to revise proposed house location on lot 9 of previously approved Streeter subdivision/site plan under application 2005-19P. Property is located on Works Road, approximately 300 feet south of Phelps Road. Property is in an R-30 zoning district.

The Wisnowski's are requesting to move the location of the house to approximately 130 feet from Works Road. The original approved plan showed the house approximately 400 feet from Works Road. The Monroe County Department of Public Health will require a septic system pump station to be installed, however, the septic system location will remain the same.

Chairman Felsen stated that the revised plan should indicate the original house location in addition to the new house location.

The Wisnowski's also looked into having the water service extended. They were told by Monroe County Water Authority (MCWA) that if additional new homes increased in that area MCWA would consider extending the water. The Board informed the Wisnowski's of the poor water quality and the need to replace water filters frequently.

Chairman Felsen noted that at the time of the original subdivision, the property owner looked into forming a water district.

The Planning Board will make a resolution regarding the Wisnowski request later in the evening.

Landtech Engineer Ed Martin requesting an informal discussion regarding plans for multi-unit townhouses and possible rezoning of land located on Rush Henrietta Town Line Road.

Mr. Martin did not appear.

Kyle Stevens to discuss special permits.

Mr. Stevens appeared to discuss recent changes regarding his business that is currently located in Mendon. Mr. Steven stated that he will no longer be able to stay at the Mendon facility and is currently looking for a new site for relocation. Mr. Stevens stated that the scope of his company has changed dramatically. Mr. Stevens stated that the company is significantly smaller and has abandoned the nursery operation. Mr. Stevens is now focused on community building and agritourism including a corn maize and pumpkin patch at his Rush Mendon Road property. The facility is also source for recruiting volunteers to help maintain the Lehigh Valley Trail in the Rush area. Mr. Stevens would now like to restructure the use of his Rush property to include a portion of his Mendon operation until he is able to secure a more suitable location. Mr. Stevens would like to continue contributing to the Rush community. Mr. Steven's main request would be to store commercial vehicles outside overnight. Mr. Stevens stated that the bulk of his equipment will fit inside the existing building. Mr. Stevens made it clear that he wants to follow the guidelines and obtain the support of the Board.

Chairman Felsen inquired about the present activity at the Rush location. Mr. Stevens stated that standard farming activity currently takes place. Originally there were some gray areas regarding the nursery business prior to moving it to Mendon. Mr. Stevens stated that if his past request for a special permit was solely for the outdoor storage of vehicles, that would have also covered any vehicles ancillary to his farming operation. Mr. Stevens stated that the primary use of the farm will continue to be farming operations.

Chairman Felsen clarified with Mr. Stevens that the commercial vehicles are not associated with the farm.

Chairman Felsen read Rush Town Code 120-7B and 120-7B (13). The code does not state allowable number of vehicles. The code does state that the special permit cannot cause any nuisances. The Planning Board would determine the number of allowable vehicles.

Mr. Stevens stated that he has all general construction vehicles, 1 pick-up truck that he drives, 1 pick-up truck that his general manager drives, 5 small dump trucks and hauling trailers. The skid loaders are kept inside and the backhoe that is used for farming is currently kept on site. Mr. Stevens notified the Board that his fleet has been reduced from 15 vehicles to 6. These vehicles are used during the day and would be off-site. Mr. Stevens also informed the Board that the site is 600 feet off the road and nothing is visible.

Board member John Morelli asked Mr. Stevens about the property frontage. Mr. Stevens stated that it is over 400 feet and his property runs west from the property entrance all the way to Pinnacle Road. Mr. Stevens informed the Board that when he first purchased the property the State granted him footage for a commercial entrance. Mr. Morelli also asked the distance from Mr. Stevens Property to the neighbor on the east side. Mr.

Stevens said he is approximately 400 - 500 feet from their driveway. There is a steep incline with a row of pine trees and nothing visible from the top of the hill. Mr. Stevens stated the history regarding problems with the neighbors began in the 70's when the MCWA installed water lines and used his property as a staging site.

Code Enforcement Officer Gerry Kusse stated that he is concerned that a return of activity will launch neighbor complaints. Mr. Kusse asked if the office and dispatch staff would be using the building. Mr. Stevens stated that he really has no office staff anymore and dispatching would be done over the phone, however, he does have to provide facilities for staff members. Mr. Kusse would also like to compare Mr. Steven's new request against the old operation to see if it would be more compatible this time around. Mr. Kusse would like to avoid any potential litigation, therefore, Mr. Stevens request will need to be reviewed carefully with very specific details.

Mr. Stevens noted the nonconformity throughout the community. There is a landscaper located just up the street from the town hall that parks his truck out front. There is a landscaping business located on Pine Tree Circle that has 5 - 6 trucks parked on their property. There are similar businesses located on Middle Road and Pleasant Road. Mr. Stevens just wants to go through the appropriate channels to obtain permission.

Mr. Morelli discussed plant items grown on the property. Mr. Stevens states that activity falls under his right to farm.

Chairman Felsen instructed Mr. Stevens that he will need to submit a formal application including the maximum number of vehicles, type of vehicles, number of employee vehicles, proposed location of the vehicle storage, waste, times of operations, days of operations and lighting.

Mr. Stevens expressed that he has many agritourism ideas for the property that would add to the community.

Mr. Stevens is hoping to proceed with his request as quickly as possible. Deputy Town Clerk Palmer stated if Mr. Stevens turns in his application by tomorrow (October 19, 2012) Mr. Stevens can be scheduled for a public hearing on November 20, 2012.

Gavin Burke to discuss a special permit for a 2 family residence in an R-20 zoning district. Property is located at 1868 Rush Scottsville Road.

Mr. Burke explained that he is requesting a special permit to continue using his house as a 2 family dwelling. After a fire in 2010 it was brought to Mr. Burke's attention that a 2 family use was not permitted without obtaining a special permit. Mr. Burke stated that he and the town never followed through with the request. Now Mr. Burke would like to sell and a potential buyer is looking for clarification from the town that both units can be rented. Mr. Burke stated that the house has been assessed and taxed as a two family since 1972. It was also bought and sold 6 times as a two family dwelling. Mr. Burke

stated that the 2 living areas are on the same meter and same furnace. There are separate entrances for each unit and each unit has its own kitchen, bath and living quarters.

Mr. Kusse stated that the additional dwelling unit attached to Mr. Burke's house does not meet today's New York State Uniform Code (NYSUC) standards and therefore, Mr. must assume the dwelling unit pre-dates the adoption of NYSUC in the town of Rush. Mr. Kusse also submitted the applicable section of the NYSUC regarding fire safety requirements.

Board member Don Sweet asked if there is any kind of fire wall between the two units. Mr. Burke is doubtful due to the age of the addition. Mr. Sweet is concerned about approving a structure that does not meet current code and possible liability if something such as fire were to occur.

There is also the issue of determining if the dwelling should be considered as a pre-existing structure. The Board also discussed requesting input from the Town Attorney. The application for a special permit at this time would require Mr. Burke to bring the structure up to current building code.

Mr. Kusse gave an example of the following: If he is notified that there is an accessory apartment in a dwelling and that it has been there since 1965, he does not have the authority to tell the owners it has to be brought up to code. However, if the owner is requesting a building permit and it includes changes to more than 50 percent of the total floor space then the Code Enforcement Office has the authority to require that it be brought up to Code.

Mr. Morelli referred to and read section 120-63 of the code. The Board and the Code Enforcement Officer all agree that the structure falls under a nonconforming use as stated in section 120-63 of the Rush Town Code.

Mr. Burke stated that repairs after the fire were all minor and cosmetic.

The Board stated that they will pass a resolution stating their opinion. Any letter to the home owner should come from the Town Attorney.

Mr. Burke later asked the Board about receiving a certificate of occupancy for the rental unit portion of his house. The Planning Board informed Mr. Burke that Mr. Kusse would make that determination and be the issuing authority.

Councilman Riepe - code discussion.

Councilman Riepe is requesting input regarding any areas of the code addressing extractive operations that the Board may believe is weak or may not hold up in a court of law. Mr. Morelli stated that Rush Town Code 120-7B(10) addresses extractive

operations such as natural gas and gravel. The protection for such operations falls under section 120-69D. Section 120-69D(4)(2) states: That the proposed use would not endanger or tend to endanger public health safety, morals or the general welfare of the community. In making such determination, the Board shall consider lot areas, land use density and spacing, type of construction, parking facilities, traffic hazards, fire hazards, offensive odors, smoke, fumes, noise and lights, the general character of the neighborhood, the nature and use of other premises, the location and use of other buildings in the vicinity and whether or not the proposed use will be detrimental to neighboring property.

Mr. Morelli stated that just about any section of that code could result in lengthy and costly debates with fuel/gas companies. Mr. Morelli stated that the town committee that is currently reviewing this topic might consider removing item 120-7B(10).

Board member Don Sweet stated that he is not in favor of removing that section because vertical gas drilling is not hydrofracking and he does not want to limit or take away rights from land owners for acceptable activities.

Mr. Morelli stated that another alternative would be to expand 120-7B(10) section of the code specifying in detail activities that are acceptable.

Board member Scott Strock asked Councilman Riepe what is the task that has been given to the town review committee. Councilman Riepe stated that they are to be gathering facts. The Board also discussed issues such as banning and possible pre-emption laws.

DECISIONS:

John Felsen made a Motion **WHEREAS**, this Board has examined a request by Gavin Burke regarding an existing 2 family dwelling located at 1868 Rush Scottsville Road, Rush, New York, in an R-20 district, and

WHEREAS, this Board has concluded that the use is non-conforming within the definition of section 120-63 of the Rush Town Code, and

WHEREAS, the dwelling has been noted in the Rush Assessor's records as a 2 family residence in existence since 1972, and this Board determined the existing use of the structure as a 2 family dwelling meets the definition of section 120-63 of the Rush Town Code titled Non-Conforming Uses.

John Morelli seconded the motion and the Board Members polled:

Roll: John Felsen aye
 John Morelli aye
 Don Sweet aye
 Rick Wurzer aye
 Scott Strock aye carried.

John Felsen made a Motion **WHEREAS**; this Board has examined the request by Stephen and Shannon Wisnowski to amend the house location on lot 9 of previously approved Streeter subdivision/site plan under application 2005-19P. Property is located on Works Road, approximately 300 feet south of Phelps Road. Property is in an R-30 zoning district, and

WHEREAS, the Board agrees with the proposed relocation site, placing the house closer to Works Road, conditioned upon:

1. The engineer submitting an amended site plan showing the original approved house location with dotted or dashed lines in addition to the new house location.

John Morelli seconded the motion and the Board Members polled:

Roll: John Felsen aye
 John Morelli aye
 Don Sweet aye
 Rick Wurzer aye
 Scott Strock aye carried.

John Felsen made a Motion **WHEREAS**; this Board has examined **Application 2012-05P** by Jack Moore requesting subdivision approval to combine approximately 57 acres into 3 lots. Property is located at 6436 Rush Lima Road. All parcels are in an R-30 zoning district and the maps and other materials which were filed with the application, including the Environmental Assessment form, and **WHEREAS**, the proposed action is a Type II action under the State of New York SEQR laws requiring no further action by this Board.

Don Sweet seconded the motion and the Board Members polled:

Roll: John Felsen aye
 John Morelli aye
 Don Sweet aye
 Rick Wurzer aye
 Scott Strock aye carried.

John Felsen made a Motion to grant preliminary approval of **Application 2012-05P** for the Moore subdivision conditioned upon:

1. Applicant complying with the comments set forth by Town Engineer Todd Ewell in letter dated October 16, 2012;
2. Applicant showing the required drainage easement for Honeoye Creek on the plans specifying 20 feet either side from top of bank;
3. Applicant obtaining approvals from the Town Attorney Frank Pavia and Town Engineer Todd Ewell for the legal drainage easement description prior to filing the document with Monroe County Clerk's Office;
4. Applicant indicating on the map any federal wetlands located on the parcel;
5. Applicant showing the portion of wetland labeled RU-27 and its 100 foot adjacent buffer on the map;
6. Applicant complying with all requirements set forth by Monroe County Development Review Committee;
7. Applicant adding names and tax account numbers on the south side of new York State Route 15A.

John Morelli seconded the motion and the Board Members polled:

Roll:	John Felsen	aye	
	John Morelli	aye	
	Don Sweet	aye	
	Rick Wurzer	aye	
	Scott Strock	aye	carried.

John Felsen made a Motion to wave the final subdivision hearing for **Application 2012-05P** by Jack Moore conditioned upon the applicant meeting all the requirements set forth in the preliminary approval.

Rick Wurzer seconded the motion and the Board Members polled:

Roll:	John Felsen	aye	
	John Morelli	aye	
	Don Sweet	aye	
	Rick Wurzer	aye	
	Scott Strock	aye	carried.

RUSH PLANNING BOARD
OCTOBER 16, 2012

BOARD BUSINESS:

Town Engineer Todd Ewell informed the Board that there are some government grants available to municipalities for photovoltaic power generation. Mr. Ewell will forward this information to the Planning Board and Supervisor Anderson for review.

With no further business, a motion was made by John Felsen and agreed by common consent that the meeting be adjourned at 9:00 PM.

Respectfully Submitted,

Meribeth Palmer
Deputy Town Clerk