

**RUSH PLANNING BOARD
SPECIAL MEETING
MINUTES OF DECEMBER 26, 2012**

A special meeting of the Rush Planning Board was held on December 26, 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, Vice Chairman
Don Sweet
Rick Wurzer
Meribeth Palmer, Deputy Town Clerk
John Mancuso, Town Attorney

OTHERS PRESENT: Councilman Bill Riepe, Town Board Liaison
Gavin Burke, Resident

Chairman Felsen welcomed all to the special meeting for adjourned Application 2012-10P by Gavin Burke.

ADJOURNED APPLICATION:

Application 2012-10P by Gavin Burke requesting a special permit for a two family dwelling in a residential zone. Property is located at 1868 Rush Scottsville Road and is in an R-20 zoning district.

The application that Mr. Burke completed and submitted to the Planning Board for a Special Permit was missing the New York State Short Environmental Assessment Form (Short EAF). The Short EAF was not listed as a required item on the application. On December 18, 2012 Mr. Burke completed and submitted the Short EAF. The Planning Board has reviewed the recently submitted Short EAF and is now able to proceed with their determinations.

DECISSIONS:

Vice Chairman Morelli made the following motion:

WHEREAS, the Board has examined **Application 2012-10P** by Gavin Burke regarding 1868 Rush Scottsville Road; and

WHEREAS, the Board previously determined on October 16, 2012 that the use of 1868 Rush Scottville Road was non-conforming within the definition of section 120-63 of the Rush Town Code (the "Application"); and

WHEREAS, the Board has determined that the dwelling is not a pre-existing non-conforming use,

THEREFOR, the Board rescinds the prior determination of pre-existing non-conforming use made at the October 16, 2012 Planning Board meeting.

Board Member Sweet seconded the motion and the Board Members polled:

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

At this time the Board reviewed the Short Environmental Assessment Form.

Chairman John Felsen made the following further motion:

WHEREAS, the Board has examined the Application requesting a special permit for the use of a two family dwelling in a residential zone on property which is located at 1868 Rush Scottsville Road; and

WHEREAS, maps and other materials were filed along with the Application, including the Short Environmental Assessment Form (“Short EAF”), pursuant to the New York State Environmental Quality Review Act (“SEQRA”); and

WHEREAS, the Board has referred the application to the Town of Rush Conservation Board for its consideration and recommendations; and

WHEREAS, The Conservation Board has reported to the Board that it has not found any aspect of the proposed action to be environmentally significant.

NOW, THEREFOR, upon consideration by the Board of the Application and the other materials submitted by Mr. Burke, including the Short EAF, and the Board having given the submitted documentation matter due consideration; it is

RESOLVED, that the Board declares itself Lead Agency for purposes of conducting an Uncoordinated Review of the Application pursuant to SEQRA; and it is further

RESOLVED, the Board classifies the Application as an Unlisted Action, as that term is defined pursuant to SEQRA subject to uncoordinated review under 6 N.Y.C.R.R. § 617.6; and it is further

RESOLVED, that upon its examination and study of the Short EAF and the maps and plans submitted with the Application, and upon the advice and recommendations of the Conservation Board, the Board determines that the Application will not present a potential significant adverse environmental impact and thus issues a Negative Declaration concluding the SEQRA process. The reasons for this determination are that the proposed action cannot reasonably be expected to lead to any of the following consequences:

- A. a substantial adverse change to ambient air or water quality or noise levels or in solid waste production, drainage, erosion or flooding.
- B. The removal or destruction of large quantities of vegetation or fauna, the substantial interference with the movement of any resident or migratory fish or wildlife species, impacts on critical habitat areas, or the substantial affecting of a rare or endangered species of animal or plant or the habitat of such a species.
- C. the encouraging or attracting of a large number of people to a place for more than a few days, relative to the number of people who would come to such place absent the action.
- D. the creation of a material conflict with the Town's existing plans or goals as officially approved or adopted.
- E. the impairment of the character or quality of important historical, archaeological, architectural or aesthetic resources or of existing community or neighborhood character.
- F. a major change in the use of either the quantity or type of energy.
- G. the creation of hazard to human health or safety.
- H. a substantial change in the use, or the intensity of use of land or other natural resources or in their capacity to support existing uses where such a change has been included, referred to, or implicit in an official comprehensive plan.
- I. the creation of material demand for other actions which would result in one of the above consequences.
- J. changes in two or more elements of the environment, no one of which is substantial, but when taken together result in a material change in the environment.

Vice Chairman Morelli seconded the motion and the Board Members polled:

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

Completion of Part II of the Short Environmental Assessment Form took place at this time.

Chairman Felsen made a Motion to grant approval of **Application 2012-10P** by Gavin Burke requesting a Special Permit conditioned upon the applicant receiving a Certificate of Occupancy for both units from Rush Code Enforcement Officer Gerry Kusse.

Vice Chairman Morelli seconded the motion and the Board Members polled:

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

The Board discussed Special Permit terms and validity.

Board Member Sweet wanted to clarify with Town Attorney Mancuso that Special Permits apply to the property as long as ownership does not change. Board Member Sweet also wanted to clarify that after Mr. Burke sells the property the new owner will be required to apply for a new Special Permit.

Town Attorney Mancuso stated that this application as submitted was for a Special Permit to run indefinitely. Currently, as just approved, no subsequent owner will have to come before this Board to obtain permission for a two family use. However, at the Boards discretion, conditions can be added with a resolution.

Vice Chairman Morelli stated that several years ago, the Board had a discussion with Town Attorney Frank Pavia, who maintained Special Permits apply to the property and Vice Chairman Morelli maintained that the Special Permits are granted to the owner. After further research by Town Attorney Frank Pavia it was determined that the Special Permits are granted to the owner. The Board has consistently handled Special Permits in this manner.

Vice Chairman John Morelli made the following further motion:

WHEREAS, the Board has determined that the Special Permit has been granted to the current owner Gavin Burke; and

WHEREAS, the Special Permit is not transferrable.

THEREFOR, any subsequent owners will be required to reapply for a Special Permit to continue the two family use.

Board Member Don Sweet seconded the motion and the Board Members polled:

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

RUSH PLANNING BOARD
DECEMBER 26, 2012

With no further business, a motion was made by Chairman Felsen and agreed by common consent that the meeting be adjourned at 7:50 PM.

Respectfully Submitted,

Meribeth Palmer
Deputy Town Clerk