

**RUSH PLANNING BOARD
REGULAR MEETING
MINUTES OF MAY 20, 2014**

A regular meeting of the Rush Planning Board was held on May 20, 2014 at the Rush Town Hall, 5977 East Henrietta Road and was called to order at 7:35 PM.

PRESENT: John Felsen, Chairman
John Morelli, Vice Chairman
Don Sweet, Member
Scott Strock, Member
Rick Wurzer, Member
Shivaun Featherman, Deputy Town Clerk

OTHERS PRESENT: Cathy Frank, Town Board Liaison
Gerry Kusse, Code Enforcement Officer, Resident
Todd Ewell, Town Engineer
James Kolb, Resident, Business Owner
Selden Chase, Resident
Stephen Hoh, Resident
Kathryn Cappella Hankins, Resident
John D. Lombardo, Attendee
John Sciarabba, Land Tech Engineer
Debbie Stevens, Resident
Duane Stevens, Resident
Kimberly Kolb, Resident
Julianne M. Mason, Resident
Leah Mason, Resident
Tracy Moyer, Attendee
Dan Moyer, Attendee
Kristina Schiano, Attendee
Kane Gasconi, Attendee
Victor Vazquez, Resident
Katherine Warner, Resident
Al Baughman, Resident
Nick Kolb, Resident
Jeff Lang, Rush Property Owner
Gina Lang, Rush Property Owner
Sandra Boysen, Resident
Robert Scigliano, Resident

Chairman Felsen welcomed all to the May Planning Board meeting.

APPROVAL OF MINUTES:

The Minutes of April 15, 2014 were reviewed.

Board Member Wurzer made a motion to accept the minutes of April 15, 2014 as amended.

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

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

TABLED APPLICATION:

Application 2014-01P by Jim Kolb, agent for Duane and Debbie Stevens, seeking a change of use from Antique Barn to Event Pavilion, and a change of use from Retail Space to Restaurant. Property is located at 7272 West Henrietta Road, Rush, NY 14543 and is zoned commercial.

Mr. Kolb explained to the Board that he has worked with Land Tech Engineer John Sciarabba on responses to Town Engineer Ewell's April 18, 2014 comment letter and has those with him tonight. The septic system is still an issue, as the original septic design submitted by Land Tech was rejected by the Monroe County Health Department. Chairman Felsen asked Mr. Sciarabba if he had submitted his responses to Mr. Ewell for his review. Mr. Sciarabba replied that he has not submitted his revised comments to Mr. Ewell yet, as his focus has been on the leach fields and working with the Monroe County Health Department on a revised design for the septic system. Mr. Sciarabba proceeded to go through the comments individually at this time.

Mr. Sciarabba noted the main issue is the septic system. Based on conversations that Mr. Stevens, property owner, and Mr. Kolb have had with John Frazer of the Monroe County Health Department, it has been determined that a monitoring system consisting of a holding tank and a meter should be installed. This would measure the volume during each event that is held and the number of guests attending each event would also be recorded for several months. Chairman Felsen stated another idea is to use the first tank that they were originally going to install as a holding tank. This would avoid having to remove a holding tank later to install a permanent tank. Mr. Sciarabba stated he would rather do the study with an external holding tank as there is the possibility of putting the beds in other locations or splitting the beds, and that may change the design of a permanent tank. Mr. Sciarabba will prepare an engineered plan detailing the holding tank and the metering system and submit the design to John Frazer and Town Engineer Ewell.

Mr. Sciarabba has not submitted the proposed grading contours and the drainage study as they may change with the leach field design. Chairman Felsen stated that the proposed drainage easement will need to be reviewed by Mr. Ewell and the Town Attorney before being filed with the County Clerk.

Chairman Felsen asked the applicant for an update regarding an easement with the adjoining property owner for the use of the drainage pond on the neighbor's property.

Mr. Kolb stated that the neighbor is in agreement with the easement but does not want to sign an easement agreement until the Planning Board approves the site plan.

Chairman Felsen asked about the location of the overflow tent on the site map. Mr. Kolb pointed out on the site map the two places it may go. Mr. Kolb also pointed out the location that a 10' x 10' smoking tent will be added as he does not want any smoking in the barn.

Board Member Strock inquired about the lighting for the parking lot. Mr. Kolb pointed out on the site map where two proposed light poles will be installed. Mr. Kolb stated that he has purchased a light meter so he can do the photometrics on the property and will submit the details to the Planning Board. Chairman Felsen asked Town Engineer Ewell if that will be acceptable, and Mr. Ewell stated yes. Mr. Ewell added that he will also require the photometrics for the two proposed light poles once they are installed as those lights are higher.

Board Member Strock asked the applicant if he has obtained the Fire Marshall's approval. Mr. Kolb replied that he has asked the Fire Marshall to visit the property but the Fire Marshall stated he will not visit the property until the Planning Board approves the site plan.

Board Member Sweet asked Mr. Kolb if he has resolved the noise issue that Mr. Laskowski, the neighbor across the street, previously complained about. Mr. Kolb informed the Board that he used a decibel meter to measure the noise level from the barn to the neighbor's front yard while music was playing inside the barn. The decibels were lower than the cars that passed by.

Mr. Stevens asked the Board for approval of a temporary Certificate of Occupancy (C of O) so he can continue to operate while the septic system study is being done. Mr. Ewell stated that Mr. Steven has already been operating without a C of O. Mr. Stevens replied that there has been one event. Code Enforcement Officer (CEO) Kusse stated, "That is not true; there have been multiple events held at the barn."

Chairman Felsen asked CEO Kusse if he is able to issue a temporary C of O. CEO Kusse confirmed that he is able to issue a temporary C of O, however, the conditions on which he chooses to issue them can put himself and the Town at great risk.

Resident Julianne Mason asked CEO Kusse to define the risks involved in issuing a temporary C of O.

CEO Kusse stated that the risk is the public use of a facility that has never been inspected and has never received a Certificate of Occupancy. CEO Kusse also stated that he understands there have been many renovations inside the barn, and per state code, plumbing and electrical systems need to be approved through inspection. That has not been done. If someone gets hurt on the property, the state will inquire on why the facility was allowed to operate uninspected and unapproved.

CEO Kusse further stated that neither he nor his predecessors have ever issued a Certificate of Occupancy for the barn. The barn was intended to be used as a barn, not for weddings or other events. If there is a change of use, it has to comply with the change of use and the Code Enforcement Officer has to approve that use for that particular facility.

Mr. Kolb stated that he began renovations to the barn 17 months ago, and in that time, David Watson installed new electrical throughout the barn. It was inspected and Mr. Kolb stated that CEO Kusse received the inspection certificate. Mr. Kolb also stated that CEO Kusse issued a permit to install a deck at the back of the building.

CEO Kusse confirmed that he did issue a deck permit to Mr. Kolb. He also inspected the footers and partial framing. However, when CEO Kusse visited the property shortly after, he saw 50 or more people on the deck. CEO Kusse did not do a final inspection on the deck and doesn't know if all the braces were in place. What if the deck collapsed and people got hurt.

Board Member Strock asked CEO. Kusse if a temporary Certificate of Occupancy would have an expiration date. CEO Kusse stated that the Rush Town Code does not give a time period for a temporary C of O.

CEO Kusse informed the Board that he had cautioned Mr. Kolb that he would issue an appearance summons for him. However, if the Board takes the action to allow CEO Kusse to issue a temporary C of O, issuing an appearance ticket will not be necessary. What CEO Kusse requires is compliance, not punishment.

Vice Chairman Morelli asked CEO Kusse that if the Planning Board approves the application conditionally, with one of the conditions being that it meets his approval, does he feel comfortable issuing a temporary C of O.

CEO Kusse stated for the record that he works at the direction of New York State, the Planning Board, the Zoning Board, and the Town Board and he cannot supersede their authority. Everything he does has to comply. CEO Kusse stated that there have been multiple events at the barn. In August of 2013 CEO Kusse issued a Cease and Desist letter to Duane and Debbie Stevens. CEO Kusse read several Rush Town Codes:

- 120-690 A (2) – The Planning Board has the power to approve site plans.
- 120-69 B (1) – A building permit can only be officially issued after the site plan is approved.
- 36-5 (F) A Certificate of Occupancy shall be issued to certify compliance with both the State Fire Prevention and Building Code.
- 36-7 (A) It is unlawful to alter, equip, use or occupy any building without an approved building permit.
- 36-15 (B) A Certificate of Occupancy can be issued only after an inspection.
- 36-18 (A) (D) An operating permit is required for any event that has an occupant load over 100 people.

- 36-12 (A) A building permit is required for any work which must conform to the Code.
- 120-12 (D) A site plan review is required.
- 36-15 (D) The local authority (Mr. Kusse explained that as being himself) has the ability to issue a temporary Certificate of Occupancy if part of the project is in compliance.

CEO Kusse stated that if the Planning Board is comfortable that part of Mr. Kolb's project is in compliance, he will issue a temporary Certificate of Occupancy.

Mr. Sciarabba advised the Board that he will submit an updated tank plan to the Monroe County Health Department within a week. Once the values come back from the holding tank study, he will work with the Monroe County Health Department to design a septic system accordingly. He will meet with the Planning Board to share the information, and at that time he plans to have a stamped plan approved by the Health Department. Mr. Sciarabba would like to keep the timeline to 3 months for the septic tank study.

Julianne Mason stated that as a parent and a Rush resident, she is glad they are arguing over a wedding barn in this community, instead of issues such as strip joints and casinos. She moved to this community 20 years ago, and she is proud that Rush is known for the wedding barn. She appreciates everyone's expertise in dealing with this issue.

Chairman Felsen stated the Board will act on this application tonight, and with no further comments or questions, Chairman Felsen declared the public hearing closed.

INFORMAL DISCUSSION:

Jeff and Gina Lang to discuss building a new home without the installation of a sprinkler system. Property is located at 1759 Middle Road and is zoned (R-30) residential.

Mr. and Mrs. Lang explained to the Board that they bought an approved building lot at 1759 Middle Road. The installation of a sprinkler system was included in the original lot approval. They are before the Board tonight to request their lot be approved for building without the requirement of a sprinkler system.

Chairman Felsen stated that he read the letter that the Langs submitted, and had a question regarding the compressor that was mentioned. Mrs. Lang explained that she owns Pride & Joy Child Care in West Henrietta and the sprinkler system at that facility has a compressor that sounds like a jack hammer. In speaking with contractors that install residential sprinkler systems, they mentioned that a compressor would be necessary. The noise, along with the high cost of installation, are among the reasons the Lang's do not want to install a sprinkler system.

CEO Kusse reminded the Board that because of the proposed placement of the dwellings and the setbacks for the three approved building lots, the Fire Commissioner

and the Fire Marshal lobbied for sprinklers to be installed. Chairman Felsen explained to the applicants that anytime there is a long driveway, the Planning Board recommends sprinkler systems. In this case, the prior property owner's engineer put the requirement in the plans, and that is how it got approved.

Board Member Sweet stated that if the Planning Board approves the removal of the sprinkler system requirement, then they would have to do the same for the other two lots.

Chairman Felsen noted that the sprinkler system requirement is not on the filed map at the County Clerk's office.

CEO Kusse stated that he spoke to a representative with the Monroe County Water Authority, who stated that his authorization to remove that requirement on Town letterhead would suffice. Chairman Felsen stated he would like the letter to also be sent to the Monroe County Health Department.

Chairman Felsen stated that the Planning Board will pass a resolution to have CEO Kusse issue the letter to the Monroe County Water Authority to remove the requirement of a sprinkler system.

Land Surveyor Kris Schultz, representing property owner Mr. Yoruk, to discuss development of Rushfield Manor Subdivision. Property is located on Rush Henrietta Town Line Road, 2033 feet west of Middle Road and is zoned (R-30) residential.

Mr. Schultz explained to the Board that property owner Mr. Yoruk would like to proceed with subdivision plans that had been previously approved with conditions by the Planning Board. Chairman Felsen stated that the subdivision was conditionally approved for building but no plans had been submitted.

Mr. Schultz submitted two concept plans for the Board to review. One plan has a short dedicated road that meets the requirements of the Rush Town Code while the other plan has a non-dedicated road. Mr. Schultz would like to know what the Highway Superintendent prefers as small dedicated roads tend to be burdens to towns. Mr. Ewell recommended that Mr. Schultz meet with Highway Superintendent David, and Mr. Ewell offered to attend the meeting as well. Board Member Strock advised Mr. Schultz to write down what Highway Superintendent David says and have him sign it.

Chairman Felsen advised Mr. Schultz that building lots developed on private roads become flag lots and the Rush Zoning Board may not grant variances for flag lots.

Chairman Felsen noted that lots 4 and 5 share a common driveway on the plans. Mr. Schultz stated that is the plan now but it could be changed if necessary. Town Engineer Ewell advised Mr. Schultz that a plan with a shared driveway would be difficult to approve.

Chairman Felsen brought up the concern of noise from the expressway. Board Member Sweet added that the noise level would be high as the expressway isn't at ground level; it's elevated and there is also a bridge. There was a discussion about possible noise barriers, such as pine trees.

It was concluded that Mr. Schultz would consult with Highway Superintendent David before starting on the field work.

Steve Hoh to discuss a lot line adjustment for his property, which is located at 5656 East Henrietta Road and is zoned (R-30) residential.

Mr. Hoh explained to the Board that his house sits on .88 acres and he owns the 88 acres of agricultural land that borders his home. Scott Barefoot removed his old septic system as it had disintegrated. In working with Scott Barefoot and Monroe County Health Department, it has been determined that Scott Barefoot will require an area of approximately 100' into the agricultural area to install a new septic system. Mr. Hoh is looking for a lot line adjustment so he can install a new septic system.

Chairman Felsen asked if there was ever a subdivision map filed at the County Clerk's office for his residential lot. Mr. Hoh replied that there was not a subdivision map filed and explained that he had purchased the 88 acres of farmland from family members. It is now incorporated into his house mortgage. Mr. Hoh kept the 88 acres separated from the house for agricultural purposes.

Chairman Felsen explained that if his property was part of a subdivision, then the Board cannot act on this administratively. He would have to go through a full subdivision application including a public hearing. However, since the agricultural area and the house have never been filed in the Monroe County Clerk's office as a subdivision, the Board can act administratively. Mr. Hoh will still need to file a map showing the 100' area taken from the agricultural lot and adding it to the residential lot.

Chairman Felsen stated the Board can approve the lot line adjustment by resolution once they receive the survey map. It was concluded that Mr. Hoh will get a survey map and submit it to Deputy Town Clerk Shivaun Featherman. The Board will then act on it.

DECISIONS:

The Short Environment Assessment Form for Application 2014-01P by Jim Kolb was completed by the Board at this time.

Chairman Felsen made a motion:

WHEREAS; this Board has examined **Application 2014-01P** by Jim Kolb, agent for Duane and Debbie Stevens, seeking site plan approval and a change of use from Antique Barn to Event Pavilion, and a change of use from Retail Space to Restaurant. Property is located at 7272 West Henrietta Road, Rush, NY 14543 and is zoned commercial; 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 review; 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; and

NOW, THEREFOR, upon consideration by the Board of the Application and the other materials submitted by Jim Kolb, agent for Duane and Debbie Stevens, 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	
	Rick Wurzer	aye	
	Don Sweet	aye	
	Scott Strock	aye	carried.

Vice Chairman Morelli made a Motion to grant approval of **Application 2014-01P** by Jim Kolb, agent for Duane and Debbie Stevens, seeking site plan approval and a change of use from Antique Barn to Event Pavilion, and a change of use from Retail Space to Restaurant conditioned upon:

1. The applicant providing a signed copy of the drainage easement to the Town.
2. The applicant providing a grading plan or equivalent for all disturbed areas.
3. The applicant showing the photometric for each existing and new light fixtures on the site plan.
4. The applicant having the final drawings stamped and signed by a registered New York State professional engineer.
5. The applicant receiving approval from the Fire Marshal.
6. The applicant receiving approval from the Town Code Enforcement Officer.
7. The applicant showing the location of the outdoor tent on the site plan.

8. The applicant going through the phases involving the engineering study with a temporary holding tank that results in the design, approval and installation of a final septic system design.

9. The applicant paving the parking lot in front of the restaurant.

All the above said items, with the exception of the final design, approval and installation of the new septic system, are to be completed within 30 days.

The final design, approval and installation of the new septic system are to be completed within 120 days along with Town Engineer Ewell's final approval.

Monthly updates from the design engineers are to be provided to the Board Members.

Board Member Sweet seconded the Motion, and the Board Members polled:

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

Chairman Felsen made a Resolution that the Board is in favor of Code Enforcement Officer Kusse inspecting the wedding barn, including the plumbing, electrical, deck, etc. and if allowable, issuing a Temporary Certificate of Occupancy to expire in 120 days.

Vice Chairman Morelli seconded the Resolution, and the Board Members polled:

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

With no further business, it was agreed by common consent that the meeting be adjourned at 9:44 PM.

Respectfully submitted,

Shivaun Featherman
Deputy Town Clerk