

**RUSH PLANNING BOARD
REGULAR MEETING
MINUTES OF DECEMBER 16, 2014**

A regular meeting of the Rush Planning Board was held on December 16, 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
James Kolb, Resident
Karen Hopkins, Resident, Realtor
Kathryn Hankins, Resident
Sandra Pearl, Attendee
Robert Pearl, Attendee
Ronald Pearl, Resident
Frances Rapport, Resident, Realtor
Todd Ewell, Town Engineer
Mary Anne Brice, Resident
Harold Delete, Resident
Allen Cole, Resident
Patricia Cole, Resident
Duane Stevens, Resident
Debbie Stevens, Resident
Jim Kolb, Resident
Kimberly Compson Kolb, Resident
Charles Steinman, Esq.
Matthew Nafus, Esq.

Chairman Felsen welcomed all to the December Planning Board meeting.

APPROVAL OF MINUTES:

The Minutes of November 18, 2014 were reviewed.

Vice Chairman Morelli made a motion to accept the Minutes of November 18, 2014 as amended.

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

Roll: John Felsen aye
 John Morelli aye

Don Sweet	aye	
Scott Strock	aye	
Rick Wurzer	aye	carried.

PUBLIC HEARING:

Application 2014-05P by Ronald Pearl requesting Subdivision and Site Plan approval to subdivide existing lot into 2 lots. Proposed lot 1 will contain the existing barn and proposed lot 2 will contain the existing house. Property is located at 500 Woodruff Road and is zoned Residential-30.

Mr. Pearl appeared with realtor Frances Rapport. Ms. Rapport explained that the property at 500 Woodruff has a house with a 2 car attached garage, a 3 car detached garage, pole barn and horse paddocks. There are 2 driveways on the property, one for the house and one for the pole barn. Mr. Pearl has not been able to find a buyer for the whole property, however, he currently has two potential buyers; one for the house and another for the barn. Mr. Pearl is seeking approval to subdivide, leaving the house on one lot and the pole barn on the land only lot.

Ms. Rapport stated that in August 2012, they came before the Board informally to discuss the possibility of subdividing the property. Her understanding at that time was there was no reason why they shouldn't be able to do it. Ms. Rapport stated they did not hear anything more from the Board after that.

Chairman Felsen stated that is not true. In the Minutes from August 2012, the Town Attorney recommended that if the property were to be subdivided, an Affidavit should be filed by the purchaser of the lot with the barn (proposed lot 1) stating they would not use the barn for storage or that they would remove the barn within a certain amount of time, and that the Affidavit be filed in the County Clerk's office.

Ms. Rapport replied that she and Mr. Pearl were not notified of that.

Chairman Felsen stated that it is part of the August 2012 Minutes that the Board discussed it with Ms. Rapport and Mr. Pearl. It's a public record and the Board has shown it to Ms. Rapport and Mr. Pearl several times since then.

Chairman Felsen noted that as the potential purchaser of the barn lot is proposing to use the barn as storage for antique vehicles, the Planning Board had referred the applicant and proposed buyer of lot 1 to the Zoning Board to request a use variance as storage is not an allowable use in the town's Code.

Ms. Rapport stated that originally they applied for an area variance but were told by the Zoning Board that they needed a use variance, not an area variance. The Zoning Board denied the use variance application, and advised them that they need a special permit from the Planning Board.

Mr. Steinman informed the Board that he represents Mr. Conboy, potential purchaser of the proposed barn lot. Mr. Steinman had spoken with Town Attorney Mancuso, who suggested that a special permit application could be submitted to the Planning Board to use the barn for a club or association. Mr. Steinman stated if they were to submit a special permit application to use the barn for an association or club, the use would be for the storage of antique vehicles for the club.

Vice Chairman Morelli advised that a recreational use by a club is allowed, however, storing vehicles is not allowed.

Mr. Steinman informed the Board that antique vehicles are a hobby for Mr. Conboy. If the Board decides that a special use could not cover the storing of antique cars, then a special permit application would be pointless.

Chairman Felsen stated that the club would have to be a not-for-profit, and Board Member Stroock added that the club would have to have more than one member.

Mr. Steinman stated that if the Board were to consider that, he is requesting the Board provide him specific information of the necessary requirements for a club or association so he can have a satisfactory application for the special permit before the Board.

Vice Chairman Morelli stated that it's impossible to spell out every possible situation in the letter of the law, so the intent of the law has to be considered. In this case, Vice Chairman Morelli believes the intent of the law is to keep the residential district in the Town of Rush from becoming a series of buildings for storage. Each decision the Planning Board makes sets a precedent that then allows others to argue for a similar use in the future.

Vice Chairman Morelli read from the Code, "accessory uses of structures customarily incident to any uses permitted above" which are either one family dwellings or public libraries, neither one of those are permitted. That brings us to the one that is being suggested; recreational facilities operated by a membership club or association for use by members and not-for-profit. Vice Chairman Morelli continued that perhaps Mr. Steinman's client has always intended to have a club, but Vice Chairman Morelli believes it's a way of getting around what is set forth here, by coming up with an association for the use of the barn. Vice Chairman Morelli would like the Town Attorney to clearly explain to the Board what exactly can qualify as a recreation facility and the uses because he feels that Mr. Steinman and his client are trying to circumvent the intent of this. It may be something that's allowed but Vice Chairman Morelli wants to be absolutely sure.

Ms. Rapport stated that from the very beginning Mr. Conboy's intent was to have his friends be a part of this and play with cars. It is Mr. Conboy's recreation and it is not a use that they have made up.

Vice Chairman Morelli stated that the Town Attorney will need to clarify if Mr. Conboy, as an individual, can own the property or if it needs to be owned by the proposed

association. Another issue is what would happen to the barn if the association is dissolved in the future.

Ms. Rapport stated that if Mr. Conboy sells the proposed lot in the future because he is no longer engaged in this particular activity, he would turn it into a building lot because it's more valuable. Ms. Rapport stated that they have had an offer on this parcel since September and the offer expires December 30, 2014. Is it possible for the Board to approve the subdivision knowing it is the intent of the proposed purchaser of lot 1 to submit a special permit?

Chairman Felsen stated that he believes the subdivision application and the special permit application should be submitted together. Chairman Felsen stated to Ms. Rapport that every time they have come before the Board, which has been 3 or 4 times since August of 2012, they have told the Board the use of the barn will be for the storage of antique vehicles. That is why the Planning Board sent them to the Zoning Board, and the application submitted to the Zoning Board stated the use will be for storing antique cars. Chairman Felsen stated that Vice Chairman Morelli's points are well taken. This Board needs to consult with the Town Attorney for specifics pertinent to a club special permit application, such as the number of members, hours of operation, ownership, and the bylaws of a not-for-profit, etc.

Mr. Steinman advised that the ownership of the barn lot would rest with Mr. Conboy as he is the contract vendee. Mr. Steinman's understanding of the special permit issue is that it is precedent for the subdivision of the property. Mr. Steinman stated that he would advise Mr. Conboy to strictly adhere to the terms of the association as and if approved by the Planning Board.

Board Member Strock stated that special permits cease to exist if it is not used for that purpose for six months. One cannot come up with an association and not be active.

Vice Chairman Morelli read the definition of recreational facilities from Section 120-38 of the Town Code as a "Structure designed or built to accommodate pastimes, exercise, or other resources offering relaxation and enjoyment."

Board Member Sweet advised that if the special permit by Mr. Conboy for recreational use was not approved, there are 13 other special permitted uses. Board Member Sweet further added that an allowable use without a special permit is to use the barn for farming activities which are primarily agricultural in use.

Attorney Nafus, representing the potential purchaser of the proposed lot with the house (lot 2) stated that his client would like to go ahead with subdividing the property and work out an acceptable plan with this Board for lot 1.

Board Member Strock mentioned that he had bought an empty lot in Rush years ago, and wanted to build a shed on it to store equipment until he built a house on the property. One of the conditions given to him was to put down a deposit that would cover the cost for the town to demolish the shed if a house was not built within two years.

Ms. Rapport asked the Board that if Mr. Pearl goes forward asking for the subdivision, what is the usual timeframe that the Board requires that a house must be built before the barn would have to be removed? Chairman Felsen replied that it would be at the discretion of the Board.

Chairman Felsen inquired as to how Mr. Pearl would like to proceed. Does he want to wait for a special permit application, or would he like the Board to act on the subdivision application tonight?

Attorney Nafus stated that they would like to postpone the subdivision application until January 20, 2015, realizing that Mr. Conboy's application for a special permit would not be before this Board until February 17, 2015. If Mr. Conboy does not want to pursue this further, Attorney Nafus would like to move ahead as quickly as possible with the subdivision.

Ms. Rapport stated she does not know if they will be able to hold the purchase offer much longer, as the potential purchaser of the house lot has waited for 5 months. Chairman Felsen stated that the Board can approve the subdivision application tonight with the condition that the pole barn not be used for storage. Board Member Sweet advised Ms. Rapport that this way, she saves the sale of the house. Board Member Sweet further added that if Mr. Conboy does not pursue a special permit, then lot 2 could be sold as a building lot.

Ms. Rapport informed the Board that Mr. Conboy currently has vehicles stored in the barn and requested that they be given until April 15, 2015 to remove the vehicles. Chairman Felsen stated that could be a condition of the subdivision approval.

Mr. Pearl decided he would like to move forward with the approval of the subdivision application at this time.

Chairperson Felsen reviewed the comments from Monroe County Department of Planning and Development, Town Engineer Todd Ewell, Rush Fire District and the Rush Conservation Board.

At this time Chairman Felsen opened the Public Hearing to the audience, asking that the speaker state their name and address for the record.

Sandra Pearl is hoping the Board can educate her. Has the word "storage" been the wrong word in reference to the issues with Mr. Pearl's applications?

Chairman Felsen stated that Mr. Pearl is proposing to subdivide his property into two parcels; one with the residential building and the other parcel with no residential building but has an accessory building. That is not an allowable use under the town's zoning ordinance.

Ms. Pearl stated that she believes the word "storage" was used because they were naïve and asked the Board how can the process be simplified? Would there have been a better word to use?

Vice Chairman Morelli stated that for example, if one comes to the Planning Board requesting approval to build a barn on an empty lot, the question would be what is the barn there for? Some uses might be permitted with a special permit and some uses do not require a special permit.

Chairman Felsen mentioned the word "storage" first came up when Mr. Pearl originally came before the Planning Board. It was stated that the potential purchaser of the barn lot would use the barn to store antique cars.

Ms. Rapport replied they were naïve in terms of storage meaning commercial.

Vice Chairman Morelli stated that he believes storage was an accurate description of what the proposed purchaser wants to use the barn for; which is exactly that; the storage of cars. It was never proposed as a recreational facility for a club. That is something that came up tonight as a possible path. The proposal was accurate for the intended use.

Ms. Pearl stated that she heard the statement earlier in the meeting that someone is trying to circumvent the process. She would like it to be part of the record that she believes no one is trying to circumvent the process by sticking a word in and believes the word storage was used because they were naïve.

Vice Chairman Morelli responded that he said it, with respect to the fact that the original purpose was a storage barn.

Ms. Pearl stated that the original purpose was to sell the property. No one is trying to circumvent anything. This process seems very complicated.

Vice Chairman Morelli stated it's really not complicated. It protects residential zones from becoming warehouse zones.

Katherine Hankins stated that she believes the conversation tonight resulted in a good decision, which is to subdivide the property and address what Mr. Sweet suggested, which is that the barn could be used for an agricultural use, or a use that fits into the harmony of the town. There are many barns in Rush that have antique cars being stored in them and being worked on with the understanding that in our code, there is this opportunity for a past time. Coming from the world of non-profits, there is no question that one can own a property and lease it to a non-profit. It happens often and she believes it could be a good way to use a very large barn, but she believes the first goal is exactly what was just said; to subdivide the land so the owner can sell it. What they are learning as builders is that many banks will not give mortgages to large properties anymore. They don't want to have to foreclose on properties. The fact that Mr. Pearl's property has 10 acres and a large barn has probably kept his property from selling. She believes the resolution tonight is a good, positive one; to split the land into 2 lots and then give the opportunity for this potential buyer to apply to do what he wants with the barn.

With no further comments or questions, Chairman Felsen declared the Public Hearing closed.

INFORMAL:

Duane and Debbie Stevens appeared with Jim and Kimberly Kolb to provide updates on the property at 7272 West Henrietta Road. Mr. Kolb stated that they are in the process of selecting a final septic system design. There are two designs they are considering. One is the plan that Ed Martin of Land Tech revised based on usage readings from the property over the summer, and the other design they are considering is a bio press system.

The bio press system was recommended by a contractor from Bloomfield. It is a smaller, underground system and it's feasible for the property. The system is approved by New York State. The Monroe County Health Department has approved some of the bio press systems in the county, however, as the system is only two years old, John Frazier of the Monroe County Health Department is having property owners sign a statement agreeing that if the system fails over time, the owner will install a different system.

Chairman Felsen asked if the bio press system discharges to the surface or underground. Mr. Kolb replied that it discharges to an underground sand bed.

Mr. Kolb stated that Land Tech is working on all the drainage. Mr. Kolb is working on the easement issue. Mr. Stevens and Mr. Kolb had looked into purchasing the property next door but the cost would be more than installing the septic system.

Chairman Felsen stated they no longer have the C of O (Certificate of Occupancy) for the barn. Mr. Kolb and Mr. Stevens understand that. Mr. Stevens stated he is in receipt of Code Enforcement Officer Kusse' letter dated November 23, 2014 which states that their temporary C of O has expired. Mr. Stevens thanked the Planning Board for allowing them time to obtain the readings for the septic system usage. Mr. Stevens is now working on finalizing the last remaining issues of the septic system design, drainage and easement.

DECISIONS:

Chairman Felsen made a motion **WHEREAS**; this Board has examined **Application 2014-05P** by Ronald Pearl requesting Subdivision approval to subdivide existing lot into 2 lots. Proposed lot 1 will contain the existing barn and proposed lot 2 will contain the existing house. Property is located at 500 Woodruff Road and is zoned R-30 and the maps and other materials which were filed with the application, including the Short Environmental Assessment Form (Short EAF); and

WHEREAS, the proposed action is a Type 11 action under the State of New York SEQRA laws requiring no further action by this Board.

Board Member Sweet seconded and the Board Members polled.

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

Chairman Felsen made a motion to grant Subdivision Approval of **Application 2014-05P** by Ronald Pearl conditioned upon:

1. The Applicant labeling the properties on the west side of Woodruff Road with the property owner's names and tax account numbers.
2. The Applicant preparing a legal document drainage easement for the existing stream. Easement is to be 20' from the top of bank where possible, or the maximum footage up to 20' where not possible.
3. The Applicant complying with the comments from Town Engineer Ewell and Monroe County Department of Planning and Development.
4. The signature block for the Town Engineer is to be removed from the plan.
5. The existing storage pole barn on lot 1 is to be emptied of all items by April 15, 2015.
6. The existing storage pole barn on lot 1 is to be removed from the property unless a primary residential structure is constructed by December 16, 2016; or if the existing storage pole barn on lot 1 is not utilized for another allowable or permitted use pursuant to the Town of Rush Zoning law.

Board Member Sweet seconded the motion, and the Board polled.

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

With no further business, it was agreed by common consent that the meeting be adjourned at 9:30 PM.

Respectfully submitted,

Shivaun Featherman
Deputy Town Clerk