

**RUSH PLANNING BOARD
REGULAR MEETING
MINUTES OF OCTOBER 21, 2008**

A regular meeting of the Rush Planning Board was held on October 21, 2008 at the Rush Town Hall, 5977 East Henrietta Road and was called to order at 7:30 P.M.

MEMBERS PRESENT: John Felsen
Al Simon
Don Sweet
Rick Wurzer

EXCUSED: John Morelli

OTHERS PRESENT: Richard Anderson, Town Board Liaison
Tom Doupe, Town Board Member, Resident
Lisa Sluberski, Town Board Member, Resident
Dale Myers, Resident
Betty Kuter, Non Resident
D. Scott Young Esq.
Roy Czernikowski, Resident
Lori Van Voorhis, Resident
Bill Grant, Resident
Pam Grant, Resident
Jessica Grant, Resident
Kathryn Turner, Resident
Mark Henry, Resident
Laura Henry, Resident
Julia Lederman, Conservation Board Member, Resident
Betsy Marshall, Resident
Pat Kraus, Conservation Board Member, Resident
Peter Harissis, Resident
Shelia Grabowski, Resident
Richard Grabowski, Resident
Steve Kantz, Resident
Mike Perry
Larry Heining, Marques Associates

APPROVAL OF MINUTES: The Minutes of September 16, 2008 were reviewed.

Rick Wurzer made a motion to approve the Minutes of September 16, 2008 as submitted.

Al Simon seconded the motion and the Board Members polled:

Roll: Al Simon aye
 Don Sweet aye

Rick Wurzer aye
John Felsen abstained carried.

APPROVAL OF MINUTES: The Minutes of August 19, 2008 as amended.

Al Simon made a motion to approve the Minutes of August 19, 2008 as amended.

Don Sweet seconded the motion and the Board Members polled:

Roll: John Felsen aye
Al Simon aye
Don Sweet aye
Rick Wurzer aye carried.

John Felsen stated that there was one item not discussed at the last Planning Board meeting. Mr. Chris Martin had asked if the Planning Board was in agreement with the Rush Fire District in eliminating the fire hydrant on Middle Road from the plans as long as the three houses will have sprinklers systems installed. The Planning Board discussed this matter briefly.

John Felsen made a motion to amend Application 2008-03P by Al DiMaria, to strike condition number 1, that the applicant adds a Fire Hydrant as per the Rush Fire Commissioner's comments. This amendment is conditioned upon the applicant installing residential fire sprinklers systems in the houses on lots 1, 2, and 3.

Al Simon seconded the motion and the Board Members polled:

Roll: John Felsen aye
Al Simon aye
Don Sweet aye
Rick Wurzer aye carried.

PUBLIC HEARING:

Application 2008 – 04P by Dale Myers of 299 Wardell Road for a Special Permit to operate a dog kennel for the purposes of breeding and selling dogs from his residence. The property is in an R-30 zoning district.

Mr. D. Scott Young, attorney for Dale Myers stated that the application is very specific as to what Mr. Myers is proposing. Last fall Mr. Myers was operating a commercial kennel in violation of the town code. Mr. Myers was not aware there was a permit requirement. Mr. Myers is not looking for a kennel to board dogs but to breed his purebred German Shepherds. Mr. Young stated that this is a hobby for Mr. Myers and only some of the puppies would be sold at no profit. Mr. Myers is proposing to have a total of 12 individual kennels, 2 specifically for the purpose of whelping puppies. There would never be more than two litters at one time. Mr.

Young stated that he did not believe that there would be any real impact on the immediate surrounding area. There would not be a change in traffic patterns or parking. Mr. Young also stated that Mr. Myers has taken steps to reduce noise with barking collars and he has also put up other natural barriers. Mr. Myers is willing to take any steps necessary to address other issues. He is not looking to operate a commercial kennel where owners board dogs for periods of time. He actually wants to have a litter or two of puppies. For the first 6 weeks the puppies remain in the indoor whelping room. When the puppies are 7 to 8 weeks they are brought out for exercise and socialization. Most of the puppies are sold by the eighth week. The application states that there would not be more than 50 puppies per year. Mr. Myers would be compliant with New York State Agricultural Markets (NYSAM) Law Article 26A as well as Article 35D of the General Business Law.

Mr. Felsen read letters and correspondence for the record:

1. Memo from Gerry Kusse dated October 21, 2008. Mr. Kusse's letter outlined the history and contact with Mr. Myers as the Building Code Enforcement Officer.
2. The Monroe County Department of Planning and Development Referral Form has been returned to the Planning Board stating that the application is a local matter.
3. The Town of Rush Conservation Board submitted a list of comments and Questions for the Planning Board's consideration.
4. A signed petition stating that the following residents of the Town of Rush, New York are strongly opposed to any commercial operations on Wardell Road in the Town of Rush except for the existing farming operations. The petition has been signed by 28 residents.
5. A letter from Resident Roy S. Czernikowski to The Planning Board, dated September 18, 2008. Mr. Czernikowski's letter states the nuisance of loud noises and barking dogs late a night. He also mentions an unlicensed vehicle.
6. Email Letter from Resident Jo Ann Deblinger expressed her opposition to the commercial kennel.
7. Email letter from Resident Richard and Shelia Grabowski stating their opposition to the dog kennel. The letter also addressed the issues of constant barking and their concern for property values.
8. Email letter from Resident Chris and Betsy Marshall stating their strong opposition to this application and outlining issues of continual dog barking, potential property values decreasing, and potential for foul odors.

9. Email from Resident Paul and Kathryn Turner stating that they are not in favor of this application as the noise is disruptive to the neighborhood.
10. Letter from Resident Carol and Ted Barnett stating their vehement opposition to the proposed application. The barking dogs have been distressing.

John Felsen asked Mr. Myers what the maximum amount of dogs would be on the premises. Mr. Myers stated that there would be 12 adult dogs and an arbitrary number of 50 puppies per year. Mr. Young stated that the neighbors are referring to this as a commercial enterprise and Mr. Myers is not going to be making a profit. Mr. Young also conveyed that the Town of Rush zoning ordinance does not provide any restrictions as to the number of dogs that a resident is allowed to have on their property. The code states that a special permit is needed for a commercial business. John Felsen then asked if Mr. Young was arguing the issue of Mr. Myers needing a special permit. Mr. Young said that his client could choose to challenge the code and the town. However, they chose not to do so because it would not benefit anyone. Mr. Young again responded that even though this is not a commercial business and he will not make a profit, Mr. Myers would be selling a few puppies to offset the cost. John Felsen stated that whether or not he makes a profit, he will be selling a product. In this case it would be a German Shepherd puppy for money. There is a form of commercialism when there is a buyer and a seller. Mr. Myers also reported that when he first moved to Wardell Road he checked with the town about obtaining a purebred dog license and permit. Mr. Myers said he was told that he did not need a permit if it was not a full time job. Mr. Myers said that he has been breeding for 4 years and the web site advertising is what led to the commercialism complaints. Mr. Myers also admitted that the barking became a problem with the natural wildlife and deer in the surrounding area. Mr. Myers invested in barking silencer collars to detour the noise and he is willing to put a fence up if necessary. There is also an in ground waste decomposer to accommodate the kennel. Mr. Myers explained that as a breeder, producing litters as an integral part of breeding that helps to acquire certain characteristics of the breed. Mr. Myers expressed that he has invested a lot into making his kennel look nice and that he does not feel he is degrading his property or the surrounding properties.

Audience Comments:

Resident Roy Czernikowski expressed a concern regarding the chemicals from the waste decomposer leaching into the well water.

Resident Mark Henry conveyed his concern for ground water contamination stemming from the waste treatment chemicals as well as contaminants such as surface cleaning disinfectants, shampooing and cleaning products that build up over time. Mr. Henry feels that this not appropriate in a residential area. The

health and safety of the residents supersedes most of the other topics here tonight.

Resident Peter Harissis stated that Mr. Myers tried to conceal the fact that he was building a kennel because he submitted an application for a storage shed, not a kennel. The barking has been going on for at least 1 to 1 ½ years. The barking also continues for long periods of time. Now the barking sounds like the dogs are in pain due to the electronic suppression collars. The term hobby implies that the breeding is in the home, twelve pens outside should not be considered hobby breeding.

Resident Lori Van Voorhis reported that the dogs do get out and on several occasions she has had them in her yard.

Resident Betsy Marshall inquired, what would happen after tonight if the Planning Board should deny this application? The applicant will still have 12 dogs and the circumstances and issues of the residents will remain. Betsy requested that the board be thoughtful when making their decision. If denied, will the applicant have to remove the outdoor cages and runs and bring the dogs inside?

Resident Shelia Grabowski stated, as a former real estate agent, potential home buyers would be apprehensive to purchase property in the vicinity of an operating dog kennel. People come out to an area like Wardell Road for the peace and quiet.

Resident Pat Krause pointed out that fencing may block the view of the deer and other wildlife but it will not block the scents and sounds which will still trigger barking.

Resident Pamela Grant stated that she lives at the far end of Wardell Road and she can hear the dogs barking. Mrs. Grant also feels that the fence will not be an efficient sound barrier.

Resident Richard Grabowski reported that the noise of the barking dogs is not a recent issue. The noise has been a problem for 2 years. Neighbors are up in the middle of the night due to the barking dogs. Mr. Grabowski also pointed out that the neighbors opposed to this are the majority in the case and that should be considered.

Resident Betsy Marshall explained that when she obtained permission from the Planning Board to build a garage, she was asked many questions as to her intentions and use for the space. Mrs. Marshall knew that any other use would be in violation of her original request. Mrs. Marshall feels this principal should apply to Mr. Myers as well. He requested a permit to build a storage shed; it should be nothing other than a storage shed. Mrs. Marshall stated that she has contacted the dog warden many times as well as other neighbors. The sheriff has been called to the Harissis residence in response to his complaints. We as

neighbors have followed the necessary steps. Mrs. Marshall cited that this has been a nuisance, has decreased the value of her home and quality of life.

Resident Steve Kantz asked if the dog warden had any input or correspondence for the Planning Board on this issue. Mr. Felsen responded that there was no correspondence submitted by the dog warden.

Resident Peter Harissis recommended the Planning Board inquire with other surrounding towns as to their town laws for dog kennels in an R-30 zones. John Felsen responded that the Planning Board can ask but the Planning Board has to deal with the existing code that Rush has in place at this time.

Mr. Young responded to the statements made by the residents. An environmental impact study for ground contamination can be addressed if requested by the Planning Board. Noise seems to remain one of the main issues. Again, the applicant has stated possible steps for correcting the noise, including fencing, insulating the kennel with special sound proof insulation, and other natural barriers. Mr. Young is hoping that the Planning Board will come to a compromise to accommodate everyone. Mr. Myers stated that if a kennel owner yields more than 25 puppies per year, a special license through NYSAM is required and he would obtain it. This type of licensing requires NYSAM to periodically inspect the kennel and the dogs.

John Felsen stated that all of the concerns were heard.

John Felsen confirmed with Mr. Young that the application being submitted is for a commercial business.

With no further discussion Mr. Felsen declared the hearing closed.

INFORMAL DISCUSSION:

Steve Griffin of 10 Park Lane regarding Creekside Automotive.
Mr. Griffin did not appear.

Mike Perry . Planned Unit Development.

Mike Perry submitted further information from the manufacturer regarding the waste water treatment plant. The additional secondary filtration unit will yield the highest quality of purification required by the New York State Department of Environmental Conservation (NYSDEC). Dry stream standards were reviewed in relationship with the dissolved oxygen levels of 7 milligrams per liter minimum and the biochemical oxygen demand (BOD) requirement of 13. Mr. Perry stated those numbers were based on the 100,000 gallon unit. With the addition of the larger 150,000 gallon unit, the BOD level has been decreased to 5. Mr. Perry stated that 342 units would be the minimum number of units that he could propose and still make the units cost effective.

In response to amenities, Mr. Perry has received permission to cross the Lehigh Valley Trail and is hoping to trade a portion of the Planned Unit Development (PUD) property with Monroe County in order to add another trail that will run the perimeter of the PUD. Mr. Perry would also like to designate a camping area for scouts. There is also a retention pond in the plan in which the treatment plant could possibly empty into. Another feature would be an equestrian rest area with a corral or tie up area. A general store has also been proposed as part of the PUD. Mr. Perry also suggested a foot bridge leading to the baseball diamond and park behind the town hall; this would complete a nice system of trails for the town that would be maintained by the PUD. There are 2 other locations suitable for some small commercial businesses as well. Mr. Perry was asked by the Board if there would be any kind of a buffer or barrier planned for the property line to the north. Mr. Perry stated that a buffer could be addressed.

There was a concern regarding the fire hydrant spacing, hydrant pressures, setbacks and distances between homes as it relates to fire hydrant pressure within the PUD, all of these being a function of fire insurance and underwriter codes. John Felsen asked Mr. Perry about residential sprinkler systems. Mr. Perry responded that it would significantly increase cost per unit. Costs could be anywhere from 2.5 to 3 dollars a square foot. Mr. Heininger stated the Insurance Services Office (ISO) standards for homes at a distance of 31 feet apart should yield 750 gallons at a rate of 20 pounds per square inch (PSI) for fire. If the distance between homes is in the range of 10 . 30 feet the yield should be 1000 gallons. Monroe County fire flow data shows flow rates of 1500 gallons per minute in the Boulder Creek area which is at a higher elevation, and flow rates of 1200 gallons per minute in the Thunder Ridge Drive area. The PUD will be at a lower elevation therefore the flow rates will be better. In the near future residential sprinkler systems will become a requirement. The topic of residential sprinkler systems was discussed further since this proposal will be a densely populated area, sprinklers would be an amenity to the Rush Fire District. Mr. Perry said he would be willing to look into sprinklers further. Mr. Felsen stated that at a recent conference a spokesman from the National Fire Protection Association (NFPA) and a spokesman from the codes committee of the American Waterworks Association (AWWA) mention a maximum cost of 2 dollars per square foot for residential sprinklers systems. In some communities where sprinkler systems are prevalent they claim costs are down to 1.6 per square foot. Mr. Sickles cited that a recent development in which he is installing a residential sprinkler system, costs were similar to the earlier estimation of 2.5 . 3 dollars per square foot. If back flow preventors are needed, this will also increase the overall cost of a sprinkler system. Mr. Heininger submitted information from the American Planning Association (APA) regarding village scales. Copies were made and distributed. This information provides street width information in relationship to the PUD. If homes are to be sprinkled, there may not a need for excessive street width. Reduction in street width and reduction in asphalt could help cut down costs, as well as increase green area and lower the overall ambient heat temperature.

Sidewalks are also included in the PUD plan. In village settings, the human scale is a consideration, with narrower right of ways and closer homes there is a feeling of belonging. The original PUD stated that the main right of way be 24 feet wide plus 2, 12 foot parking lanes for off street parking, this may be amended according to needs. Other details of the PUD were discussed briefly.

DECISIONS:

The Planning Board discussed the issue of being able to have as many dogs as one would like and the logistics of housing them. The Planning Board reviewed the application requesting permission to run a commercial operation that includes advertising and selling dogs. The Planning Board also discussed the fact that the applicant applied for a building permit to build a storage shed and the exterior dog runs were not included. The applicant's violations were reviewed and after discussing the application further it was determined the main concern is the noise and the constant nuisance created for the neighbors. The Planning Board may also seek input from the town attorney, Frank Pavia.

John Felsen made a motion **WHEREAS**, this Board has examined **Application 2008 – 04P** by Dale Myers of 299 Wardell Road for a Special Permit to operate a commercial dog kennel for the purposes of breeding and selling dogs from his residence. The property is in an R-30 zoning district, and the maps and other materials which 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 action by this Board.

Don Sweet seconded the motion and the Board Members polled:

Roll:	John Felsen	aye	
	Don Sweet	aye	
	Al Simon	aye	
	Rick Wurzer	aye	carried.

John Felsen made a motion to deny **Application 2008 – 04P** by Dale Myers of 299 Wardell Road for a Special Permit to operate a commercial dog kennel pursuant to §120-69D(1),(2) of the Town of Rush Code. The reason for this action is that the existing facility will not contribute to the general well being of the neighborhood or the community. The use will cause considerable amount of noise and would be detrimental to the neighboring properties.

Don Sweet seconded the motion and the Board Members polled:

Roll:	John Felsen	aye	
	Don Sweet	aye	
	Al Simon	aye	
	Rick Wurzer	aye	carried.

PLANNING BOARD BUSINESS:

Discussion of the PUD review process.

The electronic version of the Clarkson PUD is currently being reviewed and modified according to comments made during last months Planning Board meeting by Mr. Morelli. Mr. Felsen suggested that a meeting to continue the modification of the document would be helpful. The Planning Board set the date of Wednesday November 5th at 7:30 pm, at the town hall to continue the review process.

With no further business, a motion was made by John Felsen and agreed by common consent that the meeting be adjourned at 10:40 PM.

Respectfully Submitted,

Meribeth Palmer
Deputy Town Clerk