

**RUSH PLANNING BOARD  
REGULAR MEETING  
MINUTES OF FEBRUARY 16, 2010**

A regular meeting of the Rush Planning Board was held on February 16, 2010 at the Rush Town Hall, 5977 East Henrietta Road and was called to order at 7:30 P.M.

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

**EXCUSED:** Rick Wurzer

**OTHERS PRESENT:** Bill Riepe, Town Board Liaison  
Gerry Kusse, Code Enforcement Officer  
Todd Ewell, Town Engineer  
Lisa Sluberski, Town Board Member, Resident  
Majed El Rayess, Architect  
Naveed Hussain, property owner  
Arooj Hussain, property owner  
Charles Hughes, Resident  
Loel Turpin, Resident

**APPROVAL OF MINUTES:**

The Minutes of January 19, 2010 were reviewed.

Don Sweet made a motion to accept the minutes of January 19, 2010.

Scott Strock seconded the motion and the Board Members polled:

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

**Tabled Application 2009-10P** by Naveed and Arooj Hussain for commercial site plan approval to construct an 8024 square foot, single story building and gasoline filling station, located at 5946 East Henrietta Road. Property is located in a commercial zoning district.

Architect Majed El Rayess submitted a letter outlining all of the fulfilled requirements requested from the Planning Board at their previous meeting on January 19, 2010. Mr. El Rayess reviewed and addressed each of these items with the board. Mr. El Rayess has also submitted the Full Environmental

Assessment Form. The Department of Environmental Conservation (DEC) has stated that areas of the parking lot that are going to be resurfaced only are not considered areas of disturbance which keeps the total disturbance area under 1 acre. There has been a 20 foot easement for the tributary added to the site plan. The Army Corps of Engineers provided Mr. El Rayess with wetland maps. According to the maps provided, the Rush Mart site plan will not encroach on the wetlands. Map C2 of the plan shows all the signage that is planned for the site. Mr. El Rayess is currently working with Monroe County Department of Public Health on the exact location and type of septic system. Mr. Hussain stated that the hours of operation will be from 5am to 11pm. The Town of Rush Zoning Board of Appeals has granted the applicants variance requests as follows:

**Application 2010-01Z** for three area variances:

- One side setback of 47 feet, Rush Town Code 120-12E (5) requires 75 feet. The existing building setback was 65 feet.
- One front setback of 108 feet, Rush Town Code 120-18 requires 140 foot setback. The existing building setback was 108 feet.
- One rear/side setback to the north of 20 feet, Rush Town Code 120-19 requires 25 feet. The existing building was 8.33 feet.

**Application 2010-02Z** for one parking variance

- Site plan proposes 34 off street parking spaces, Rush Town Code 120-57 requires 48 spaces (6 spaces for every 1,000 square foot of building).

**Application 2010-03Z** for one fence variance

- Applicants are requesting a variance to build a new 6 foot fence on the southeast side of the property line to provide screening for the residential properties.

The Planning Board stated that a provision for some type of screening should be put in place on the north side of the property since there is a home on that side.

Resident Charles Hughes asked if the storm sewer drain at the south entrance will be relocated. Mr. El Rayess stated that it will not be moved. Mr. Hughes also requested that he be notified of any brush removal ahead of time so that he can keep their cats inside, out of harms way.

**INFORMAL DISCUSSION:**

Loel Turpin appeared to discuss the subdivision of a 20.88 acre parcel located at 500 Works Road. Ms. Turpin explained that she wants to subdivide 4.7 acres from the lot including the existing house so that a smaller house can be built on

the remaining 15 acres. The proposed driveway will be approximately 700 feet back from the main road with a turnaround at the proposed house. Perk tests have already been done and a raised bed septic system will not be required. The Board asked if Warren McGrail was a type N surveyor and if not a Professional Engineer stamp will be required on the plans.

Gavin Burke of 1868 Rush Scottsville Road appeared to discuss an existing accessory apartment. Mr. Burke stated that he received a letter from Gerry Kusse after a house fire. The letter informed Mr. Burke that an accessory apartment was not allowable according to the Town of Rush Code. Mr. Burke stated that his purchase agreement stated that it had a rental unit. Mr. Burke also stated that the Assessor's Office has had it on record as a 2 family dwelling since 1972. Mr. Burke stated that he was unaware of the accessory apartment regulations. Mr. Burke would like to continue to use it with the rental unit. The board noted that current code states that accessory apartment use is for a family member or a domestic servant. The board discussed if the dwelling should be grandfathered and if it should be a 2 family dwelling or a single family with an accessory apartment. The Planning Board will seek advice from the town attorney before making a determination. Code Enforcement Officer Gerry Kusse stated that he would take responsibility for inquiring with the Town Attorney on behalf of the Planning Board.

Mr. Kusse informed the Planning Board that a lease agreement has been signed with the owners of 7272 West Henrietta for the use of the retail portion of their building. Mr. Kusse has issued a temporary one year Certificate of Occupancy.

Mr. Kusse has also stated that a Rush resident is interested in putting up a WindTamer Turbine. As long as the required setbacks and height requirements are followed, a building permit can be issued.

Deputy Clerk Palmer will provide the board with the minutes from a previous site plan application that involved a wind tower.

The Planning Board reviewed the Full Environmental Assessment Form submitted by Mr. El Rayess for the Rush Mart site plan. Number 20b(3) was changed to state yes, any disrupted area will be reclaimed.

#### **DECISIONS:**

John Felsen made a Motion **WHEREAS**, this Board has examined **Application 2009-10P** by Naveed and Arooj Hussain requesting commercial site plan approval to construct an 8024 square foot, single story building and gasoline filling station, located at 5946 East Henrietta Road. Property is located in a commercial zoning district. Review of the proposed commercial site plan and the maps and other materials which were filed with the Application, including the Environmental Assessment form, and

**WHEREAS**, the proposed action is an unlisted action under the State of New York SEQR laws, and

**WHEREAS**, the proposed action is an unlisted action to the Town of Rush Conservation Board for its consideration and recommendations, and

**WHEREAS**, the Conservation Board has reported their concerns regarding the proposed site plan, now therefore

**BE IT RESOLVED**, that upon its examination and study of the environmental assessment form and the maps and plans submitted with the application, upon the advice and recommendations from the Conservation Board, this board determines that the proposed action will not have a significant effect on the environment. 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.

John Morelli seconded the motion and the Board Members polled:

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

John Felsen made a Motion to grant site plan approval for **Application 2009-10P** conditioned upon:

1. The applicant obtaining approval from Todd Ewell Town Engineer, Monroe County Department of Public Health regarding the septic system, Monroe County Water Authority and New York State Department of Transportation.
2. The applicant contacting the neighbor to the north in order to make arrangements for a suitable buffer along the north property line.

Don Sweet seconded the motion and the Board Members polled:

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

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