

**RUSH ZONING BOARD OF APPEALS  
REGULAR MEETING  
MINUTES OF FEBRUARY 14, 2013**

A regular meeting of the Rush Zoning Board of Appeals was held on February 14, 2013 at the Rush Town Hall, 5977 East Henrietta Road, and was called to order at 7:00 PM.

**BOARD MEMBERS PRESENT:** Don Van Lare, Chairman  
Robert Weiler  
Amber Corbin  
Kelly Pruden  
Garry Koppers  
Meribeth Palmer, Deputy Town Clerk

**OTHERS PRESENT:** Gerry Kusse, Code Enforcement Officer, Resident  
Dan Woolaver, Town Board Liaison  
John Clark, Engineer  
Henry Hansen, Rush Property Owner  
Robert Turner, Attendee  
Nick Montanaro, Engineer  
Robert McRae, Resident  
Todd McRae, Resident  
John Scirabba, Engineer  
Matthew Schwasman, Resident  
Carol Barnett, Resident  
Kathryn Hankins, Resident

**WORKSHOP:**

**Application 2013-01P** by Robert Turner and land owner Henry Hansen requesting a use variance for the development of a 12,750 square foot building to accommodate an office and storage for commercial drilling equipment/vehicles. Property is located at 7566 West Henrietta Road and is in a commercial district.

Engineer John Clark explained that he is representing Mr. Turner on the project. Land owner Henry Hansen is requesting to subdivide with 25 acres going to Mr. Turner for the proposed project. Approximately 3000 square feet of the proposed building is office space and the remaining 9000 square feet is for the shop area that will house equipment and facilitate minor equipment repairs. The building will be serviced by public utilities, a private leach field and a storm water management facility. The site will also accommodate parking, lighting and a sign. Mr. Clark submitted a site plan, a letter from a realtor and letters of support from neighbors and nearby land owners.

Chairman Van Lare asked Mr. Hansen what the parcel was zoned prior to the rezoning in 1983. Mr. Hansen stated that it was residential. Chairman Van Lare also asked Mr.

Hansen if he was informed at that time that agriculture is not a permitted activity in a commercial zone. Mr. Hansen was not informed of that code and the land has been farmed all along.

The Board inquired with Mr. Turner as to what will take place on the proposed site.

Mr. Turner explained to the Board that his equipment will mostly be inside and some outside. Mr. Turner's trucks are large Kenworth 900's with 25 foot beds outfitted with specialty equipment for drilling. The proposed building will house the trucks and drilling equipment and will also allow for minor repairs to be done in between jobs. Mr. Turner's company does not transport pipe or conduit. Pipe is delivered directly to the work site. Mr. Turner stated that any necessary pipe welding is also done on the job site.

Mr. Turner explained that his operation is a surface launch and surface retrieval system. In other words large pits are not created, drill heads are steered with drill rods, earth is drilled out and pipe is installed with minimal disturbance.

Chairman Van Lare explained that there are two neighboring houses to the applicants proposed site. Normally commercial zoned properties are required to have a 75 foot buffer from residential zoned properties. Although the houses were zoned commercial at the same time as Mr. Hansen's parcel, the Board would still like to see a buffer area along the south west lot line of the proposed site.

Engineer John Clark stated that they would make an effort to provide some type of screening.

Chairman Van Lare also informed the applicants of other zoning requirements that would affect the proposed project as follows:

Rush Town Code 120-12E addresses general provisions regarding waste materials, outside parking of vehicles and outside storage of materials. Parking after hours will require a special permit from the Planning Board.

Rush Town Code 120-23 and 120-35 addresses signage. The applicant is permitted 1 wall sign no greater than 20 square feet in size and 1 free standing sign no higher than 20 feet and 32 square feet in area.

Rush Town Code 120-36 refers to Lighting and Hours of Operation which fall under the jurisdiction of the Planning Board.

Rush Town Code 120-57 addresses Off Street Parking and allowed number of spaces based on the size of the building.

Rush Town Code 120-58 refers to off street loading. Mr. Turner's plan proposes 9 truck bays.

Rush Town Code 120-62 explains prohibited activities such as the outside storage of rubbish.

Chairman Van Lare informed the applicants that Rush Town Code requires commercial driveways and parking areas to be constructed of asphalt or cement. Mr. Clark stated that at the rear of the site where there is going to be a lot of truck movement gravel would be more appropriate. The applicants inquired about relief from that requirement.

Chairman Van Lare stated that use variances require the applicant to satisfy the 4 questions outline on the application.

The first question addresses monetary hardships. The above said commercial parcel has no sewers, and therefore, very limited uses. Second, the property has unique and uncommon circumstances. The commercial parcel is extremely large and is encumbered on many sides by environmental issues. Third, the proposed use would not alter the central characteristic of the neighborhood. The applicants stated that the activity on the site will be minimal with trucks off site most of the time and the rest of the activity would take place inside the building. Lastly, showing that the hardship is not self created. The above said property has sat there for 30 years, therefore, the hardship is not newly created.

The Board and the applicant discussed visiting the property prior to the public hearing.

The Public Hearing has been scheduled for March 14, 2013.

**Application 2013-02P** and **Application 2013-03P** by Ralph Harding requesting two area variances necessary for a proposed subdivision and site plan for property located at 40 Scofield Road. Proposed lot widths do not comply with 120-17 of the Rush Town Code. Property is located in an R-30 zoning district.

Land Surveyor Nick Montanaro appeared on behalf of resident Ralph Harding. Mr. Montanaro explained that Mr. Harding has an existing house and barn with a long driveway. Mr. Harding would like to subdivide the property into 3 lots. There is currently a utility easement and a 150 foot wide access easement to accommodate ingress and egress for the neighboring property belonging to Mr. Robert McRae.

Resident Todd McRae came forward to explain the history of the property. At one time the parcel belonged to his grandfather Mr. Steinfeldt. Mr. McRae explained the easement was placed there to ensure that the property would not be subdivided in the manor that is now being proposed.

The Zoning Board asked if there is written proof of this claim. Mr. Montanaro stated that the Deed indicates no such restrictions and that the current easement is noted in the Deed will remain in place.

Board member Corbin stated that any arguments will need to be set aside, the purpose of the workshop is for the Zoning Board to collect information at this time.

Chairman Van Lare met with Mr. Harding and Mr. Montanaro several weeks ago to discuss the proposal. Chairman Van Lare mentioned that the Board is very concerned with flag lots and only considers flag lots if it is the only way into the parcel. Chairman Van Lare stated that the Board has never approved a variance where more than one property owner has use of a shared driveway. In this case, Mr. Harding is proposing 3 parties to have use of one driveway.

Page 2 of the application asked the applicant "Can the benefit sought by this requested variance be achieved by some other feasible method that would not require a variance?"

Chairman Van Lare stated that there are alternatives and the Board discussed the possibilities with Mr. Montanaro.

Chairman Van Lare stated that since there are other options, he would like to schedule another workshop so that Mr. Montanaro has time to discuss them with Mr. Harding.

A second workshop for Mr. Harding has been scheduled for March 14, 2013.

**INFORMAL DISCUSSION:**

Land Tech Engineer John Sciarabba appeared on behalf of Mr. Dorschel owner Rush Associates LLC, to discuss development of a 27 acre parcel located at the corner of West Henrietta Road and NYS Route 251. The parcel is unique because it is split zoned. There is approximately 2 acres at the corner of the parcel that is zoned commercial and the remainder of the parcel is zoned residential. Mr. Dorschel has owned the property since 1996 and would like to peruse development.

Mr. Scirabba has appeared informally before the Town Board with this preliminary proposal and will be requesting to rezone the entire 27 acre parcel to commercial. Mr. Scirabba was asked by the Town Board to appear informally before both Zoning and Planning Boards as a courtesy.

Mr. Scirabba has a meeting set up with New York State Department of Transportation (NYSDOT) to discuss both access points that are on state roads and managed by the state. The preliminary plan currently shows road access on Rush Scottsville Road and New York State Route 15A (NYSR15A). The proposal indicates ingress and egress on NYSR15A as a right turn in and a right turn out. The preliminary plan proposes retail development near the corner of NYSR15A and Rush Scottsville Road as phase 1. Phase 2 is proposed office, warehouse or flex space further back on the property. The project will require approvals from the New York State Department of Environmental Conservation (NYSDEC) and the United States Army Corps of Engineers (USACE). Mr. Scirabba mentioned that he is very aware of the house located to the east and creating

buffer for protection is highly important. Mr. Scirabba plans to communicate and work with property owner Mr. Schwasman.

Mr. Scirabba stated that this plan as proposed conforms to town zoning. If the plan is modified there is a possibility that future variances may be requested.

Chairman Van Lare informed Mr. Scirabba that offices are acceptable under a commercial zone. However, a warehouse as mentioned is not an allowable use in a commercial zone.

The Board discussed concerns regarding the heavy traffic during peak hours. The Board is appreciative that Mr. Scirabba has presented the preliminary plan and asked for their input.

Mr. Scirabba stated that he will be appearing before the Planning Board informally on February 19, 2013 and is hoping to set up a meeting with some of the immediate neighbors.

Resident Matthew Schwasman stated that he is the owner of the house directly to the east of the proposed project. Mr. Schwasman is very concerned about the traffic issues. The topography of the corner is very problematic especially eastbound on Rush Scottsville Road as it crosses through the NYSR15A intersection. During summer months the seasonal truck traffic increases greatly. Mr. Schwasman stated that he is very opposed to any sort of a drive through due to the outdoor noise and nuisance produced. Additionally, grading would most likely be required and would possibly cause ground level to become level with the bedroom window of his house. Mr. Schwasman asked the Board to keep in mind that buffering is extremely important.

#### **APPLICATION ASSIGNMENTS:**

**Application 2013-01P** by Robert Turner and land owner Henry Hansen has been assigned to Board members Pruden and Corbin.

**Application 2013-02P** and **Application 2013-03P** by Ralph Harding has been assigned to Board members Weiler, Koppers and Van Lare.

#### **BOARD DISCUSSION:**

Councilman Woolaver had no report.

Code Enforcement Officer Kusse had no report

The Board discussed visiting the Harding property in addition to the complicated variance request. The Board is concerned regarding potential neighbor issues that can arise from shared driveways.

Resident and Co-Chairman of the Citizens Working Committee on Hydrofracking (CWCH) Carol Barnett informed the Board that the committee has submitted their Hydrofracking report to the Town Board and the Zoning Board should be receiving a copy for review. Carol Barnett stated that the CWCH has recommended that David Slotjee present on hydrofracking at the next Town Board meeting.

**Approval of Minutes:** December 13, 2012

Don Van Lare made a motion to approve the Minutes of December 13, 2012 as written.

Robert Weiler seconded the motion and the Board Members polled.

Roll:	Don Van Lare	aye	
	Robert Weiler	aye	
	Amber Corbin	aye	
	Kelly Pruden	aye	
	Garry Koppers	aye	carried.

With no further business, a motion was made by Don Van Lare and agreed by common consent that the meeting be adjourned at 8:30 PM.

Respectfully Submitted,

Meribeth Palmer  
DeputyTown Clerk