

**RUSH PLANNING BOARD
REGULAR MEETING
MINUTES OF JUNE 18, 2013**

A regular meeting of the Rush Planning Board was held on June 18, 2013 at the Rush Town Hall, 5977 East Henrietta Road and was called to order at 7:30 PM.

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

OTHERS PRESENT: Councilman Bill Riepe, Town Board Liaison
Gerry Kusse, Code Enforcement Officer, Resident
Richard Tracy, Rush Fire Marshall
Daniel Cornwall, Property Owner
Jim Smith, Resident
Jason Beyor, Resident
Debbie Stevens, Resident
James Kolb, Resident

Chairman Felsen welcomed all to the June Planning Board meeting.

APPROVAL OF MINUTES:

The Minutes of May 21, 2013 were reviewed.

Vice Chairman Morelli made a motion to accept the minutes of May 21, 2013 as corrected.

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

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

PUBLIC HEARING:

Application 2013-05P by Jason Beyor requesting a special permit for the outdoor storage of 2 commercial trailers on residential property as stated in Rush Town Code 120-7B(13). Property located at 6550 East River Road. Property is zoned R-30.

Mr. Beyor explained to the Board that he is requesting a special permit to park his work trailers on the north side of the house well screened by trees. Mr. Beyor has future intentions of erecting a barn in that location to store the trailers. The trailers consist of a 16 x 8 foot enclosed trailer and a 6 x 12 foot dump trailer. Mr. Beyor discussed additional screening and the purpose/use of the trailers with the Board. Mr. Beyor explained that the enclosed trailer contains a large portion of his construction tools and the entire trailer is often off site for days or weeks at a time.

Board Member Scott suggested that the Board consider requiring that both trailers be inspected and licensed at all times to prevent them from becoming a storage facility.

Chairman Felsen read all correspondence into the record. Monroe County Department of Planning and Development (MCDP&D) ruled the application a local matter. The Rush Board of Fire Commissioners does not have any concerns other than what will be stored in the enclosed trailer. The Rush Conservation Board does not find any aspect of the project to have significant impact on the environment.

Resident Jim Smith stated that he is Mr. Beyor's neighbor and has no objection to the proposed application.

Property owner Daniel Cornwall stated that he has appeared before the Board as an applicant many times. Mr. Cornwall asked the Board why the applicant did not follow the application requirements, such as, submitting a map to scale. Although not directly related to this application Mr. Cornwall also addressed the section of the code stating that trailers and similar vehicles are required to be placed behind the rear foundation corner of the main dwelling. Chairman Felsen stated that the Planning Board can waive some of the application requirements due to the small size and nature of the project. Mr. Beyor's main issue is the down grade behind his property preventing him from placing the trailers there.

Mr. Cornwall stated that he has no objection to the application. However, he is concerned that the project location will grow into a building. Mr. Cornwall stated concern regarding possible future use of an accessory building for commercial purposes.

The Board reviewed sections of the code addressing accessory structures and uses.

Mr. Cornwall again stated that he does not want to hold up Mr. Beyor, however, he would like the Board to be consistent.

The Board will seek Town Attorney input regarding interpretation of special permit application requirements.

With no further comments Chairman Felsen declared the public hearing closed.

INFORMAL DISCUSSION:

Chad Lochman did not appear for the scheduled informal discussion with the Planning Board.

INFORMAL DISCUSSION:

John Kearney appeared to discuss questions regarding the property at 5970 East Henrietta Road. Mr. Kearney explained that he has submitted an application for a special permit to be heard at the July meeting. Mr. Kearney submitted documents from the current owner's attorney clarifying ownership and his intention to purchase the property. The Board stated that property owners are only authorized to apply or make applications unless written permission has been given to an additional person such as Mr. Kearney.

Mr. Kearney asked if there is any other information that will be required by the Board.

Chairman Felsen informed Mr. Kearney that a site plan to scale may be required. Mr. Kearney will also be required to supply intended uses including the maximum number of vehicles to be stored outside during non-business hours, the intent to display and sell tires outside during business hours, use and storage of a tow truck on the premises.

Mr. Kearney also informed the Board that he would like to put a small addition on to the rear of the building to conceal the storage of materials. The Board stated that there may be setback issues, However, that would not fall under the special permit. The addition could be discussed with Code Enforcement Officer (CEO) Kusse.

It was noted that the building has not been empty for one year and the use would be identical to its prior use.

The Board reviewed the town code pertaining to allowable uses in a commercial zone and special permit requirements.

Mr. Kearney stated that the Department of Environmental Conservation (DEC) is not requiring any contamination clean up, however, there are still remnants of the spill and Mr. Kearney has his environmental attorney looking into that issue.

The Board reviewed the proposed list of uses that Mr. Kearney submitted with his application.

Deputy Town Clerk Palmer will seek input from the Town Attorney regarding tire display/sales as stated in section 120-12E(2) and 120-12(3), the requirement of a site plan to scale under section 120-69. Input will also be requested for a pre-existing business conforming to section 120-12.

Deputy Town Clerk Palmer will notify the applicant as to the outcome of the Town Attorney's review.

INFORMAL DISCUSSION:

Chairman Felsen asked what has been added to the property since the previously approved site plan. Ms. Stevens stated that Colby's Ice Cream and Bake Shop is the only addition.

Ms. Stevens pointed to the previously approved site plan indicating the proposed locations of a gazebo, additional parking, and an ATM machine.

Chairman Felsen pointed out that an advertisement found on Craig's List indicated a several services on that site including limousine service, barbeque business, bake shop, manufacturer, contractor and small body shop.

Ms. Stevens stated that their other tenant is Blue Ocean Products. They are not a manufacturing business, they only assemble products. She also stated that they are rarely there and will be moving off site soon. Ms. Stevens did state that there is now a parking area and they are renting parking spots. She is unsure of the other items listed in the advertisement.

Chairman Felsen clarified that there has been an expansion to the restaurant and asked if there is any intention to expand further. CEO Kusse stated that a building permit was obtained for the addition to the restaurant. However, Chairman Felsen stated that it was not approved by the Planning Board prior to being built. Mr. Kolb explained that there are plans for a gazebo and a picnic area with tables to accommodate 20-30 people in addition to an existing ground level deck to the east of the restaurant that did not require a permit.

The Planning Board stated that there are a lot of additions that have been made. The Planning Board has many times previously informed the Steven's that a current up to date site plan needs to be submitted to the Board. Ms. Steven's stated that they will not submit a new site plan for 1 addition.

Ms. Stevens also informed the Board of their intention to use the old barn as a wedding and event site with future plans of adding a deck and using holding tanks rather than the septic system.

Chairman Felsen asked if they have inquired with the Monroe County Department of Public Health (MCDPH) to see if holding tanks would be allowed on their site. The Board also asked about parking, ingress/egress, and the capacity of the event barn. Mr. Kolb indicated approximately 150 people.

Chairman Felsen noted that the Steven's have very little available land left and asked if they have an alternative plan to remove waste if the MCDPH will not allow them to utilize holding tanks. Mr. Kolb stated that they would use port-a-potty units.

The Board discussed the current septic system and what it currently accommodates on the property.

Mr. Kolb stated that many years ago the septic system was build for a dairy operation and a 5 bedroom house. Chairman Felsen corrected Mr. Kolb stating that Mr. Domico built and upgraded the septic system for the conversion of the barn into a house. Chairman Felsen stated that he would be able to look up the inspection report regarding the upgrade.

Water supply was discussed. Ms. Stevens said everything will be carry in and carry out or catered. There will be no sale of liquor. The Board inquired about hand washing. Mr. Kolb stated that hand sanitizer is provided inside of the port-a-potty units or they can walk to the restaurant to wash hands.

Mr. Kolb explained that wedding and event barns are very popular right now. Mr. Kolb stated that the idea is very basic. The Stevens barn is 40 x 80 feet. The empty barn would be decorated with white lights tables and chairs. There would be smoke detectors, lighted emergency exit signs and no smoking signs. Mr. Kolb stated that he would like Fire Marshall Tracy to advise him regarding all requirements.

Fire Marshall Tracy explained that changing the use of the barn to a place of assembly requires a sprinkler system to be installed under the New York State Fire Code Section 903. This section clearly states that any place of public assembly holding more than 100 persons must have a sprinkler system. Mr. Kolb stated that they would change occupancy to 99 people and put a tent outside. Fire Marshall Tracy stated that an additional tent is not acceptable.

Fire Marshall Tracy explained that he can only evaluate a written proposal. To date he has not received a written proposal or plan from Mr. Kolb or the Stevens. Chairman Felsen reiterated to both Mr. Kolb and Ms. Stevens that the Town Attorney sent a written letter to Mr. and Mrs. Stevens dated November 7, 2012 requesting a site plan with all the changes and additions that have been made to the property since the last approved site plan including any new proposals for the property. The Board explained that there is more than just a proposal for a change on the property. Other changes/additions have taken place on the property including changes to Mr. Kolb's restaurant, renters, the driveway, grading, dirt piles, and additional parking areas.

Ms. Stevens stated that she is appearing before the Board informally to share their intentions and she would like to know what the next step is. Chairman Felsen stated that a site plan showing all additions/changes to date and future proposals for the Boards review is the next step.

CEO Kusse stated that it would also be beneficial if Mr. Stevens attended the meeting to eliminate confusion and help make sure that all parties are of the same understanding.

BOARD BUSINESS:

Don Sweet explained to the Board that Town Supervisor Richard Anderson has asked the Planning Board to review an additional right to farm law model from New York State Agriculture and Markets in comparison to the Town of Gorham Right to Farm Law.

After further review of the additional Right to Farm Law models, materials and correspondence the Planning Board made the following motion.

Don Sweet motioned that the Planning Board recommends the Town Board pass a Right to Farm Law similar to the Town of Gorham's Right to Farm Law.

John Morelli 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.

The Board further discussed special permit application requirements.

DECISIONS:

Chairman Felsen made a motion to table **Application 2013-05P** by Jason Beyor requesting a special permit for the outdoor storage of 2 commercial trailers on residential property as stated in Rush Town Code 120-7B(13). Property located at 6550 East River Road. Property is zoned R-30.

The reason for tabling the application is to gain a legal determination from the Town Attorney regarding the Planning Boards right to waive certain site plan requirements for a Special Permit pertaining to an existing structure and property with no construction or building, under Town code 120-69.

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

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

With no further business, a motion was made by Chairman Felsen and agreed by common consent that the meeting be adjourned at 10:00 PM.

RUSH PLANNING BOARD
JUNE 18, 2013

Respectfully Submitted,

Meribeth Palmer
Deputy Town Clerk