

**RUSH PLANNING BOARD
REGULAR MEETING
APPROVED MINUTES
SEPTEMBER 19, 2006**

A regular meeting of the Rush Planning Board was held on Tuesday, September 19, 2006, at the Rush Town Hall, 5977 East Henrietta Road and was called to order at 7:30 P.M.

MEMBERS PRESENT: John Felsen, Chairman
Don Sweet
Al Simon
Richard Anderson
ABSENT: John Morelli

OTHERS PRESENT: Scott Mooney Esq. Boylan Brown, Attorney for the Town of Rush
Todd Ewell, Clough Harbour & Associates, Engineer for the Town of Rush
Gerald Kusse, Code Enforcement Officer.
Tom Doupe, Town Board Member
Lisa Sluberski, Town Board Liaison
Dave Sluberski, 69 Rush West Rush Rd
William Fletcher Esq.
Kyle Stevens, 2500 Rush Mendon Rd
Doug & Coleen Morrison, 2466 Rush Mendon Rd
Fred Calev, 2516 Rush Mendon Rd
Arnold & Natalie Carmichael, Lexington Ave
Bill Chase, East Henrietta Rd
Duane & Debbie Stevens, 7272 West Henrietta Rd
Jeff Mulligan, Barber Rd, Avon
David Manning, 399 Jeffords Rd
Jim Manning, 142 Farmcrest Dr
Kevin O'Donoghue, L.S. Stafford, NY

Mr. Felsen introduced Mr. Richard Anderson as the newest Member of the Planning Board.

APPROVAL OF MINUTES:

The Minutes of August 15, 2006 were reviewed. Mr. Simon made a motion to approve the Minutes of August 15, 2006 as submitted. Mr. Sweet seconded the Motion and the Board Members were all in agreement. Mr. Anderson abstained.

ADMINISTRATIVE LOT LINE ADJUSTMENT:

Application 2006-16 P Fogarty Re-Subdivision. Jeffrey T. Mulligan and Lesa Sobololewski requesting approval to subdivide an 8.652 acre parcel from a 150.82 acre parcel. There is an existing house on the 8.652 parcel. No new development is planned for the parcel created.

Mr. O'Donoghue stated that Mr. Mulligan had recently purchased the property which has an existing farm house on it; he plans to sell the house with approximately 8 acres after the parcel has been subdivided. Mr. Mulligan will be placing a deed restriction on the parcel containing the existing house stating that no future development will be allowed.

There was a discussion regarding the existing barn on the property. Mr. Kusse stated that after the new lot is created, the barn will be to close to the lot line in accordance to town code for the side set back requirement of 25 feet. He asked that it be noted on the plans that the barn is to be removed. Mr. O'Donoghue agreed to do this.

There were no further comments on this Application. Mr. Felsen declared the Hearing closed.

TABLED APPLICATIONS:

Application 2006- 15 P by Kyle D. Stevens, of Stevens & Sons LLC, & Stonewood and Waters, Inc. for a Special Permit to operate a Horticultural Nursery, Lawn & Landscape services and an office at property located at 2500 Rush Mendon Road. Property is located in an R-30 Zoning District.

APPLICATION WAS PREVIOUSLY TABLED ON 8/15/06

Mr. Felsen stated that this Application was tabled upon:

1. Further information from Council regarding the provisions of Agricultural Law and the definition of a Horticultural Nursery.
2. The Planning Board will extend the timetable for decision and enforcement until a decision is made by this Board.

Mr. Mooney read from correspondence addressed to the Planning Board Members from Mr. Frank Pavia Esq., regarding the definition of a Horticultural Nursery. Mr. Mooney stated that according to New York Agricultural and Markets law any activity that is directly related to the growing and maintaining of a horticultural nursery and specialties which includes nursery stock, ornamental shrubs and ornamental trees and flowers would reasonably fall within the scope of the definition of horticultural nurseries. Anything that doesn't fall within that can not be authorized under a Special Use Permit. This would be the landscaping activities of the landscaping business. The Board Members discussed the allowable uses for the property.

Mr. Felsen made a Motion **WHEREAS;** this Board has examined **Application 2006-15 P** by Kyle D. Stevens, of Stevens & Sons LLC, & Stonewood and Waters, Inc. for a Special Permit to operate a Horticultural Nursery, Lawn & Landscape services and an office on property located at 2500 Rush Mendon Road. **WHEREAS,** this Application is a Type II action under the State of New York SEQR laws requiring no further determination by this Board.

Mr. Simon seconded the motion and the Board polled:

Roll:	Mr. Felsen	aye	
	Mr. Simon	aye	
	Mr. Sweet	aye	
	Mr. Anderson	aye	carried.

Mr. Felsen made a Motion that the Planning Board deny the Application for the Special Permit regarding the Lawn & Landscape services existing at (or in the future at) 2500 Rush Mendon Road and that the **Horticultural Nursery** only be allowed at 2500 Rush Mendon Road. That the definition of a Horticultural Nursery be such that it allows for the uses defined under New York Agricultural and Markets law Section 301 (2) of such law, any activity that is directly related to the growing and maintaining of a horticultural nursery and specialties, “including nursery stock, ornamental shrubs, ornamental trees and flowers” Christmas tree operation whether dug for transplanting or cut from stumps. The Applicant shall be allowed to construct after a building permit is obtained, any additional structures that would be allowed under the Agricultural Law, such as green houses, cold storage for seeds and garages.

Mr. Anderson seconded the motion and the Board polled:

Roll:	Mr. Simon	aye	
	Mr. Sweet	stated for the record, that he wanted to vote for the whole thing, the landscape business as well as the horticultural nursery. He didn't want to deny the horticultural nursery, but he also wanted the landscape business.	
	Mr. Sweet	nay	
	Mr. Anderson	aye	
	Mr. Felsen	aye	carried.

Application 2005-21 P by Arnold Carmichael acting as Agent for Duane & Debbie Stevens for Site Plan approval to construct a retail / storage building, to renovate an existing building into office space, and to make utility improvements to the property. Property is located at 7272 West Henrietta Rd. Property is located in a Commercial Zoning District.

APPLICATION WAS PREVIOUSLY TABLED ON 5/16/06

Mr. Carmichael addressed the following comments from the May 25, 2006 Planning Board decision to Table Application letter.

1. The proposal for the future septic system.
2. The construction of the recycling car wash system.
3. The location of the bay in the existing garage for the future wash bay.
4. Site drainage.
5. The uses for the existing white farm house. The Applicant was informed by Mr. Kusse that they were required to comply with his request to bring the structure up to New York State Property Maintenance Code specifications.

The Board Members and the Applicant's discussed the above comments as well as the uses for all of the existing and proposed buildings.

Application 2004-08 P by Arnold Carmichael for Subdivision / Site Plan approval to subdivide a parcel containing 19.9 acres into five (5) lots. One single-family dwelling is planned for each of the lots created. Property is located on Rush Henrietta Townline Road, 2033 feet west of Middle Road. Property is located in an R- 30 District.

APPLICATION WAS PREVIOUSLY TABLED ON 7/18/06

Mr. Carmichael addressed the following comments and or concerns:

1. The Hammerhead design for the proposed road.
2. The 20 foot easement to Mrs. Mary McGuire's property.
3. The radius change of the proposed road entrance as noted by Mr. Steve King, Town of Rush Highway Superintendent.
4. The noise note regarding vehicles traveling on the I-390 expressway to be added to the plans for each lot.
5. The Drainage Easement.

The Board Members and the Applicant discussed the above comments.

DECISIONS:

Mr. Felsen made a Motion **WHEREAS;** this Board has examined **Application 2005-21 P** by Duane & Debbie Stevens for Site Plan approval of a proposed commercial site located at 7272 West Henrietta Rd. The approval is for the construction of a retail / storage building, to renovate an existing building into office space, and to make utility improvements to the property. Property is located in a Commercial Zoning District 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,** this Board has referred this Application to the Town of Rush Conservation Board for its consideration and recommendations, and

WHEREAS, the Conservation Board's comments have been addressed, 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, 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.

Mr. Anderson seconded the motion and the Board polled:

Roll:	Mr. Felsen	aye	
	Mr. Simon	aye	
	Mr. Sweet	aye	
	Mr. Anderson	aye	carried.

Mr. Felsen made a Motion to approve the Site Plan for **Application 2005-21 P** by Duane & Debbie Stevens as submitted containing buildings "A" through "G" with the associated parking and the proposed use of a used car lot designated as "H" consisting of a 60' x 85' lot for the display of maximum of 15 vehicles. The Site Plan shall be granted conditioned upon:

The hours of operation of the proposed buildings shall be changed on the plans as follows:

1. Building “C” the existing storage building shall be changed to 24 hours of operation.
2. Building “D” the proposed office building shall be changed to 8am – 10pm.
3. Building “G” the proposed storage building shall be changed to 24 hours of operation.

The following conditions shall apply for approval.

1. The Applicant shall submit to the Town of Rush all of the proposed uses as well as the existing uses for Building “C” including any maintenance of vehicles along with any proposed paint spray booth operation. The Applicant shall obtain approval if necessary from the New York State Department of Environmental Conservation and the Town of Rush Code Enforcement Officer for any requirements or permits involving the operation of the spray paint booth.
2. The Applicant shall submit a lighting plan to the Engineer for the Town of Rush.
3. The Applicant shall obtain the approval of the Engineer for the Town of Rush.
4. The Applicant shall obtain the approval of the Fire Marshall for the Town of Rush.
5. The Applicant shall obtain the approval of the Monroe County Water Authority.
6. The Applicant shall obtain the approval of the Monroe County Department of Public Health.
7. The Applicant shall obtain the approval of the New York State Department of Transportation.
8. Within six (6) months, the Applicant shall either raise the existing wood frame home, have it moved or bring it up to the Property Maintenance Code of the State of New York.
9. The Applicant shall show on the plans for approval, the details of the existing oil water separator along with the trench drain system leading into it, as well as the details for the alarm system.
10. The Applicant shall add to the plans the approval blocks for the following Agency’s:
 - Town of Rush Planning Board Chairman
 - Engineer for the Town of Rush
 - Monroe County Water Authority
11. The Applicant adding to the plans all of the General Notes of the Town of Rush that apply to the project.
12. The Applicant shall install signs that are in accordance with the Town of Rush Sign Law.
13. The Applicant shall obtain the approval of the Fire Marshal for the Town of Rush for the alarm system and sighting of the fuel storage tanks on the property.
14. Before any changes in use on the site occurs, the Applicant will need to contact the Code Enforcement Officer and obtain the approval of the Town of Rush Planning Board.

Mr. Simon seconded the motion and the Board polled:

Roll:	Mr. Felsen	aye	
	Mr. Simon	aye	
	Mr. Sweet	aye	
	Mr. Anderson	aye	carried.

Mr. Felsen made a Motion **WHEREAS;** this Board has examined **Application 2006-16 P** for the Fogarty Re-Subdivision requesting approval to subdivide an 8.652 acre parcel from a 150.82 acre parcel. There is an existing house on the 8.652 parcel. No new development is planned, for preliminary plat review, and the maps and other materials which were filed with the Application, including the Environmental Assessment form and **WHEREAS,** the proposed action is a Type II action under the State of New York SEQRLaws requiring no further action by this Board.

Mr. Sweet seconded the motion and the Board polled:

Roll:	Mr. Felsen	aye	
	Mr. Simon	aye	
	Mr. Sweet	aye	
	Mr. Anderson	aye	carried.

Mr. Felsen made a Motion to grant preliminary approval to the Fogarty Re-Subdivision Lot R1 Part 2.

Mr. Anderson seconded the motion and the Board polled:

Roll:	Mr. Felsen	aye	
	Mr. Simon	aye	
	Mr. Sweet	aye	
	Mr. Anderson	aye	carried.

Mr. Felsen made a Motion to waive the final Public Hearing for Subdivision approval.

Mr. Anderson seconded the motion and the Board polled:

Roll:	Mr. Felsen	aye	
	Mr. Simon	aye	
	Mr. Sweet	aye	
	Mr. Anderson	aye	carried.

Mr. Felsen made a Motion **WHEREAS;** this Board has examined **Application 2004-08 P** by Arnold Carmichael for Subdivision / Site Plan approval to subdivide a parcel containing 19.9 acres into five (5) lots. One single-family dwelling is planned for each of the lots created. Property is located on Rush Henrietta Townline Road, 2033 feet west of Middle Road. Property is located in an R- 30 Zoning District, 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 SEQRLaws, and

WHEREAS, this Board has referred this Application to the Town of Rush Conservation Board for its consideration and recommendations, **BE IT RESOLVED**, that upon its examination and study of the Environmental Assessment Form and the maps and plans submitted with the Application, 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.

Mr. Simon seconded the motion and the Board polled:

Roll:	Mr. Felsen	aye	
	Mr. Simon	aye	
	Mr. Sweet	aye	
	Mr. Anderson	aye	carried.

Mr. Felsen made a Motion to preliminary approval to Rushfield Manor Subdivision conditioned upon:

1. The Applicant labeling on sheet 1 of 4 and sheet 4 of 4, the Radii for the entrance road to be 35" instead of 30".
2. The Applicant adding to the plans a note on each of the five (5) lots to indicate that the proposed homes will be subjected to highway noise generated by vehicles traveling on the I-390 expressway.
3. The Applicant moving the proposed house pad location for Lot #3 as far east as possible to meet the setback from the east property line to the proposed garage.
4. The Applicant showing the Drainage Easement on the plans for the drainage course that is on the west side of lot #3 and that the dimensions of the easement be the width of the stream plus 20 feet on each side.

Mr. Simon seconded the motion and the Board polled:

Roll: Mr. Felsen aye
 Mr. Simon aye
 Mr. Sweet aye
 Mr. Anderson aye carried.

Mr. Felsen made a Motion to waive the final Public Hearing for Subdivision approval conditioned upon:

1. The Applicant obtaining the approval of the Monroe County Department of Public Health.
2. The Applicant obtaining the approval of the Monroe County Department of Transportation.
3. The Applicant obtaining the approval of the Engineer for the Town of Rush.
4. The Applicant obtaining the approval of the Town of Rush Highway Superintendent.
5. The Applicant obtaining the approval of the Monroe County Water Authority.

Mr. Anderson seconded the motion and the Board polled:

Roll: Mr. Felsen aye
 Mr. Simon aye
 Mr. Sweet aye
 Mr. Anderson aye carried.

There were no further comments and the meeting was adjourned at 11:50 P.M.

Respectfully submitted,

Darlene Pilarski
Deputy Town Clerk