

**RUSH PLANNING BOARD
REGULAR MEETING
MINUTES OF JUNE 20, 2017**

A regular meeting of the Rush Planning Board was held on June 20, 2017 at the Rush Town Hall, 5977 East Henrietta Road and was called to order at 7:00 PM.

PRESENT: John Felsen, Chairman
John Morelli, Vice Chairman
Scott Strock, Member
Shivaun Featherman, Deputy Town Clerk

EXCUSED: Rick Wurzer, Member
Don Sweet, Member

OTHERS PRESENT: Dan Woolaver, Town Board Liaison
Todd Ewell, Town Engineer
Charles Steinman, Attorney
Jen & Brian Davin, Residents
Roger & Bonnie Tobey, Residents
Scott & Leslie Tobey, Residents
Jerry Farrell, Resident

Chairman Felsen welcomed all to the June Planning Board meeting.

APPROVAL OF MINUTES:

The Minutes of April 25, 2017 were reviewed.

Board Member Strock made a Motion to accept the Minutes of April 25, 2017 as written.

Vice Chairman Morelli seconded the Motion, and the Board polled:

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

TABLED APPLICATION:

Application 2017-05P by Brian Davin, requesting a Special Permit to operate an indoor and outdoor remote control car racing club. Property is located at 999 Honeoye Falls # 6 Road and is zoned Residential-30.

Chairman Felsen stated that Mr. Davin provided a response letter regarding the Planning Board's request for more information about his proposed club dated May 8, 2017.

Chairman Felsen noted in that letter, Mr. Davin stated that preparation of food for sale will not be allowed on site, and asked will he be preparing food? Mr. Davin replied no. They may have food catered, for example a hot dog cart, but they will not be preparing food.

Vice Chairman Morelli recalls at the April 25, 2017 Planning Board meeting, Mr. Davin stated that some members may chip in to buy pizza or hamburgers. Vice Chairman Morelli believes that having a hot dog cart on site is more of a commercial activity rather than a club activity.

Vice Chairman Morelli read aloud the definition of a Club from the Code Section 120-5 (B):

"An organization catering exclusively to members and their guests, or premises and buildings for recreational, social, or athletic purposes, which are not conducted primarily for gain, provided there are not conducted any vending stands, merchandising or commercial activities except as required generally for the membership and purposes of such club."

Vice Chairman Morelli stated the Code does not explain what "required" means but he doesn't believe a hot dog stand would be considered as something required at Mr. Davin's events. Mr. Davin explained that food is not required but people like to eat while they are there. Rather than having people driving in and out of his driveway to get food elsewhere, he likes to make it easier for them by having food on site. Vice Chairman Morelli stated that the Code prohibits vending stands.

Mr. Davin asked if that is the same as a restaurant preparing food off site and bringing it to his property? Chairman Morelli replied that the Code says vending stands. The Code does not say, for example, that pizza boxes are not allowed.

Attorney Steinman asked if club members agree in advance they would be catered by a certain restaurant and contribute a few dollars, would that be in accordance with the Code? Vice Chairman Morelli replied that sounds different to him than a vending stand. Chairman Felsen advised that a commercial vendor would need to be permitted by the Monroe County Health Department.

Chairman Felsen asked how many portable toilets will be provided on site?

Mr. Davin replied that he was advised by Mr. Chris Kassmann of the Monroe County Health Department that the Monroe County Health Department does not regulate the use of portable toilets. Mr. Davin was referred to portable toilet companies for a number of portable toilets in relation to how many people will be on site, and was advised one is sufficient.

Chairman Felsen asked Mr. Davin to explain the proposed number of people that would be present at race events and the proposed maximum number of members in the club.

Mr. Davin explained that they race twice a week; Thursday evenings from 4:00 pm to 10:30 pm, and Sundays from 8:00 am to 4:30 pm. Although the proposed number of members in the club is 150, attendance varies at the weekly race events. Anywhere from 5 to 30 people may attend. Once or twice a year they hold a large race event where the maximum people attending are 52.

There was a discussion to determine the proposed maximum number of club members allowed and the proposed maximum number of spectators allowed on site at any one time, and it was decided that for easier clarification, a proposed maximum number of total people allowed on site at any one time be discussed.

Mr. Davin expressed concern about how to regulate attendance to a limited number at an event. Board Member Strock suggested people sign up ahead of time. Mr. Davin said that would be difficult. If someone signed up and then did not attend, a spot would have been taken from someone else.

Jennifer Davin advised the Board that they are very family orientated. Many club members bring children and at times her sister and nephews visit from out-of-state. That would need to be taken into account when determining a maximum number of people allowed on site.

Chairman Felsen noted that Mr. Davin is proposing the maximum number of member vehicles allowed on site to be 30 at any single event, however, only 20 parking spaces are on the site map. Mr. Davin explained that some members park on the grass by the outdoor track, using their vehicles as pit areas. Chairman Felsen would like the available parking spaces near the track shown on the site map.

Mr. Davin stated that the Town Engineer Ewell commented in his review letter dated June 13, 2017 that the parking area should include 1 ADA (Americans with Disabilities Act) compliant parking space, however, Mr. Davin consulted with the Justice Department and was advised that private membership-only clubs do not need to be ADA compliant. Mr. Davin explained that the parking area is stone, and painting blue strips on stone will be difficult. Town Engineer Ewell explained that the ADA compliant parking area can be designated by a sign. It is not determined by blue strips but by accessibility; the ability to wheel or physically cross a surface easily.

Attorney Steinman advised that ADA compliance does not apply to this club as it's not open to the public. Chairman Felsen asked if spectators would be considered "the public". Attorney Steinman stated that the distinction would be that spectators are more the invitees of the members, but does not want to offer the Board any legal opinions that it would rely on and advised the Board to consult with the Town Attorney.

Vice Chairman Morelli asked if the proposed building to house an indoor track will be purchased by the club?

Mr. Davin replied that he is purchasing the building. Attorney Steinman explained that in terms of ownership, it will belong to Mr. Davin but if the Special Permit is approved, then the members would lease it for the club's use.

Mr. Davin explained that the proposed building will be approximately 12,800 square feet but less than 8,000 square feet would be used for the indoor race track. The building will be heated and insulated. A hose will be run inside to wet down the track. Chairman Felsen stated that he would like the hose bib shown on the site map.

Vice Chairman Morelli asked if the large events will be on the same date from year to year?

Mr. Davin replied that the large events are not on the same date each year but are planned months in advance and advertised on his website.

Mr. Davin stated that he does not want to do anything that would negatively affect his neighbors or the Town. Prior to submitting his Special Permit Application, he advised his neighbors of his plans and if they had any concerns. Additionally, he has notified neighbors of any upcoming large events to ensure it will not be an issue. He does not plan to create any excessive noise, lighting or traffic.

Vice Chairman Morelli explained that this Board is charged with making a decision regarding the harmony of the existing use and existing zoning. There are not many houses in Mr. Davin's neighborhood, but there may be in the future. He is concerned that someone may purchase the property next to the Davins property, and because there is a gun club and a race track, will want to operate something there. It's an issue of precedence and stressed that it is a residential area.

Board Member Strock believes the operation would be more suited in a commercial zone. His suggestion is to limit the number of people allowed on site to under 20, which will be more consistent to Special Permits that this Board has approved in the past. He is looking forward to hearing what impact Mr. Davin's operation has had on neighbors.

Chairman Felsen opened the floor for public comments and asked anyone speaking to state their name and address for the record.

Resident Roger Tobey lives next to the Davins and stated that the current operation has not been a problem. There were a few times that larger, noisier cars were raced but after speaking with Mr. Davin, he no longer allows the larger cars to be used. The race track is lit but pine trees shield the light. Traffic is not heavy.

Board Member Strock asked Mr. Tobey if Mr. Davin were to hold a race event on a holiday, would that be an issue to him?

Mr. Tobey replied no.

Bonnie Tobey lives next to the Davins and has no issues with the current operation. Living across from a gun club, the race track is nothing. She does not mind the gun club either.

Scott Tobey has no issues with the current operation, however, he would be concerned if dirt bikes were raced. He noted the events are family centered. He asked Mr. Davin if he plans to expand, and Mr. Davin replied he is not planning to expand. Mr. Tobey asked the Board that if Mr. Davin sold his property, would the Special Permit transfer to a new owner?

Chairman Felsen replied that if granted, the Special Permit would only be for Brian and Jennifer Davin and would not transfer to a new owner.

Board Member Strock appreciates the neighbors comments. He likes the fact that this facility is in the area and believes that it provides a lot of value, however, he wants to adhere to the intent of the Code as well.

With no further questions or comments, Chairperson Felsen declared the public hearing closed.

DECISIONS:

Chairman Felsen made a Motion **WHEREAS**; this Board has examined **Application 2017-05P** by Brian Davin, requesting a Special Permit to operate an indoor and outdoor remote control car racing club. Property is located at 999 Honeoye Falls # 6 Road and is zoned Residential-30; and

WHEREAS, maps and other materials were filed along with the Application, including the Short Environmental Assessment Form ("Short EAF"), pursuant to the New York State Environmental Quality Review Act ("SEQRA"); and

WHEREAS, the Board has referred the application to the Town of Rush Conservation Board for its review and has considered its recommendations; and

WHEREAS, this Board has not found any aspect of the proposed action to be environmentally significant; and

NOW, THEREFOR, upon consideration by the Board of the Application and the other materials submitted by Brian Davin, including the Short EAF, and the Board having given the submitted documentation matter due consideration; it is

RESOLVED, that the Board declares itself Lead Agency for purposes of conducting an Uncoordinated Review of the Application pursuant to SEQRA; and it is further

RESOLVED, the Board classifies the Application as an Unlisted Action, as that term is defined pursuant to SEQRA subject to uncoordinated review under 6 N.Y.C.R.R. § 617.6; and it is further

RESOLVED, that upon its examination and study of the Short EAF and the maps and plans submitted with the Application, and upon the advice and recommendations of the Conservation Board, the Board determines that the Application will not present a potential significant adverse environmental impact and thus issues a Negative Declaration concluding the SEQRA process. 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.

Vice Chairman Morelli seconded the Motion and the Board Members polled:

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

Chairman Felsen made a Motion to grant approval of **Application 2017-05P** by Brian Davin requesting a Special Permit conditioned upon:

1. The total number of people at weekly events shall be no more than 35 and that the total number of vehicles allowed at weekly events shall be no more than 15.
2. The number of events shall be limited to 2 events per week.
3. The total number of members in the club shall be no more than 150.
4. The Board approves that there be 2 large events per year, with no more than 60 people and no more than 30 vehicles on site at the large events.
5. No on-site vendors are allowed.
6. No food will be prepared for sale or distribution other than from approved New York State Department of Health permitted caterers or food vendors.
7. The applicant complying with the comments of the Town Engineer, and adding to the site plan the area where the club member racers will park their vehicles by the outdoor race track.
8. The total number of parking vehicles in the proposed parking area by the new building be labeled and the total number of parking spaces be added to the site plan.
9. The water line from the well to the proposed hose bib at the proposed building and the existing hose bib at the outdoor track be shown on the site plan.
10. That one handicapped accessible parking spot be designated.
11. That the club has to be not-for-profit and that only members of the club can race at the track.
12. There be no overnight camping.
13. That the hours of operation for the Thursday night racing be from 4:00 pm to 10:00 pm and that the Sunday hours of operation be from 8:00 am to 4:00 pm and that lighting be turned off at 10:00 pm.

Further:

In determining the acceptability of this proposed Special Permit application, the Planning Board considered the unique character of this residentially zoned neighborhood, noting that it already includes another recreational facility, i.e., the Rochester Brooks Gun Club.

Vice Chairman Morelli seconded the Motion and the Board Members polled:

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

DISCUSSION:

Jerry Farrell of the Monroe County Fair Association spoke briefly to the Board about the proposed activities that the Fair would like to have at the Rush Riverside Refuge property as part of the proposed Agreement with the Town.

Mr. Farrell explained this year is a “Show and Tell” Fair to show people where the Fair will be in the future. There will be no admission, and only some animals, flowers and vendors. Although there will be some small kiddie rides, there will not be a midway. They would like to hold this event for 3 days in August.

The Fair will be renovating barns for the future.

There was a lengthy discussion among Board Members on whether or not a Special Permit would need to be granted from the Planning Board for the Fair Association.

Chairman Felsen noted that Special Permits are granted to property owners. In this case, the Town of Rush owns the land. He is waiting for town attorney clarification on whether this Board can grant a Special Permit to an association that does not own the land.

Board Member Strock stated that in Section 120-8 (A) of the Code, public uses are allowed on public land, and questions if the Fair event could be considered a public use. The property is public land.

Chairman Felsen advised Mr. Farrell that if the town attorney determines that this Board needs to grant a Special Permit, a site plan is required that needs to include sewage, water, lighting and parking. Additionally, if there are changes to the operation other than what this Board has specified, they would need to appear before the Planning Board again for review and possible re-approval.

RUSH PLANNING BOARD
JUNE 20, 2017

With no further business, it was agreed by common consent that the meeting be adjourned at 9:00 pm.

Respectfully submitted,

Shivaun Featherman
Deputy Town Clerk