

**RUSH PLANNING BOARD
REGULAR MEETING
MINUTES OF APRIL 25, 2017**

A regular meeting of the Rush Planning Board was held on April 25, 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
Don Sweet, Member
Rick Wurzer, Member
Shivaun Featherman, Deputy Town Clerk

EXCUSED: Phil D'Alessandro, Building Inspector

ABSENT: Gerry Kusse, Councilperson, Acting Town Board Liaison

OTHERS PRESENT: Charles Steinman, Attorney
Brian Davin, Resident
Todd Ewell, Town Engineer
Joe Ardieta, Vanguard Engineering
Amy Clark Stasiw, Resident
Kristopher Stasiw, Resident
Joseph Stasiw, Attendee
Glenn Thornton, Thornton Engineering
Jim Casey, Comet Flasher, Inc.

Chairman Felsen welcomed all to the April Planning Board meeting.

APPROVAL OF MINUTES:

The Minutes of February 21, 2017 were reviewed.

Vice Chairman Morelli made a Motion to accept the Minutes of February 21, 2017 as written.

Board Member Sweet seconded the Motion, and the Board polled:

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

Chairman Felsen was not present at the February Planning Board meeting.

The Minutes of March 21, 2017 were reviewed.

Chairman Felsen made a Motion to accept the Minutes of March 21, 2017 as written.

Board Member Sweet seconded the Motion, and the Board polled:

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

PUBLIC HEARING:

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.

Mr. Davin appeared with Attorney Charles Steinman and explained that he has asked Attorney Steinman to represent him and to guide him correctly through the Planning Board Application process.

Mr. Davin stated for the last several years he has constructed a remote control race track in his backyard for friends and family. Over the years, it has grown and now it's at the point where he needs to file for a Special Permit to operate as a formal club. Along with the outdoor race track, he plans to build a structure to house an indoor race track for winter use.

Chairman Felsen asked the applicant how many years has he been operating an outdoor race track?

Mr. Davin replied for 9 years.

Chairman Felsen stated that Mr. Davin came before the Planning Board informally in 2008 regarding the process he needed to file for a Special Permit to operate a race track. At that meeting, Vice Chairman Morelli explained that a Special Permit is needed to operate an outdoor track, and went over the Special Permit process and the requirements, including the fact that the only way an organization or use like that could be considered for approval in a Residential zone would be as a not-for-profit membership-only club. However, Mr. Davin went ahead and built the outdoor race track without a Special Permit, and has been operating it for 9 years without approval.

Mr. Davin apologized to the Board, stating that at the meeting in 2008 he was considering building a structure. Mr. Davin stated that it's his own fault for thinking that he needed a Special Permit only if he were to build a structure to have a race track. He left the meeting believing that a Special Permit was for a building, and that he could have something in his backyard as long as he did not operate a profitable business.

Mr. Davin explained that for the past 9 years the race track has not been operated as a business. It's been a hobby of his, including having friends and family over, but now it's changing course from a backyard BBQ get-together into an organized club format. The reason they started this is to have a family friendly atmosphere. There are very few remote control race tracks in the area that are family friendly.

Chairman Felsen noted that in Mr. Davin's submittal, it states that non-members may race at the track and that non-member fees can be charged.

Attorney Steinman explained that the club is by membership only – if someone wants to bring their race car to race, they have to become a member.

Chairman Felsen asked how many members are in the club?

Mr. Davin replied there are approximately 50 members overall, but only about 10-14 members are present at each race day. Not all members are there at once.

Chairman Felsen noted that on Mr. Davin's race track website, there is a picture that shows his residence with over 15 cars parked.

Mr. Davin explained that picture was from a large race about two years ago, and there were about 30 cars parked there. He only holds large races about twice a year. Races are held two times a week; on Thursday evenings and Sundays. Any large events are held on a Saturday.

Attorney Steinman asked the Board how many club members it would allow?

Chairman Felsen replied that it depends - will it affect traffic and sewage disposal? 15 members won't affect traffic but 50 would with regard to parking spaces, noise, etc. and sewage disposal. Chairman Felsen stated that in addition, having spectators present would require more support services, such as more food, water and sewage disposal.

Chairman Felsen noted that currently, Mr. Davin has one port-a-potty listed in his plans. Both the Conservation Board and the Monroe County Health Department commented on sewage disposal in their reviews. Monroe County mentioned that a private sewage disposal would need to be approved, and Chairman Felsen does not know if Monroe County would allow portable toilets. Chairman Felsen asked Mr. Davin if his existing well has potable or non-potable water?

Mr. Davin explained his well has potable water but they don't serve water. The well supply is only used only to hose down the tracks, and people bring bottled water with them to drink.

Chairman Felsen noted that Mr. Davin's website states that overnight camping is available.

Mr. Davin stated he doesn't know if it's overnight camping or not. If there is a big race on a Sunday, he may have friends that stay over the night before to camp out.

Chairman Felsen also noted that on Mr. Davin's website food is advertised as being available – hamburgers, hotdogs, etc., however, serving food is not listed on Mr. Davin's Application to the Planning Board. Chairman Felsen asked the applicant if he has cleared selling food with the Monroe County Public Health Department?

Mr. Davin replied no. It's just getting together and ordering a pizza or hamburgers and splitting the cost.

Chairman Felsen asked Mr. Davin if he is serving food to the public?

Mr. Davin replied only to members.

Chairman Felsen stated to the applicant that it doesn't matter that it's to members; you are serving food to the public.

Attorney Steinman stated that nothing is going to happen going forward that is in violation of the Health Code or the Town Code.

Vice Chairman Morelli stated that on Mr. Davin's website, there is a lot of information about non-member fees and non-member races, and he is concerned that this really will be a not-for-profit, members only club or association. In addition, the website lists sponsors. Vice Chairman Morelli stated he is not a tax attorney, but there are requirements for a not-for-profit club in regards to New York State and how one does business.

Mr. Davin explained that the sponsors are only race car sponsors and they send gifts to give out at races. There is no money exchanged.

Board Member Wurzer asked if the sponsors have displays to sell merchandise at the racing events?

Mr. Davin replied no.

Vice Chairman Morelli noted that over an acre of land is being disturbed for his project.

Town Engineer Ewell agreed, stating the information was conflicting so he did his review as a commercial building, which will require a swale, survey, and a stamp by a licensed engineer.

Board Member Strock stated that he does not know the requirements for non-profit, but in his mind as long as Mr. Davin owns the land and the building, he has ultimate control

over everything, but it's fraught with risk over who really are the members, the officers, and who really has say.

Board Member Sweet stated a club with 15 members he can understand, but a club with 50 members is big. In addition to members, this operation has sponsors, non-members, food selling and spectators. Board Member Sweet believes that this is more like a commercial enterprise than a club, and suggests the Board consult with the town attorney regarding at what point a club stops being a club and becomes something bigger.

Chairman Felsen stated that the Town Engineer reviewed the Site Plan that Mr. Davin submitted and has numerous comments that need to be addressed, including lighting. In addition, the Monroe County Department of Planning and Development Review has numerous comments as well.

Chairman Felsen advised the applicant that in considering a Special Permit application, the Board needs to know the maximum number of spectators, members, cars, parking spaces, etc. that are anticipated. If in the future the Code Enforcement Officer receives a complaint and visits your property, he may cite you if you are over the maximum number that is allowed in an approval.

Chairman Felsen would like the applicant to add the locations of the neighbors on the Site Map and the distances from the race track to their houses.

Vice Chairman Morelli stated that for every Special Permit application, the Board must take into consideration the community and the facts. Mr. Davin's operation is a great thing but personal opinions must be set aside and what it comes down to is that it's in an area that is zoned Residential, so there has to be limits.

Chairman Felsen stated when someone has a large operation in a Residential area, it can cause code violations.

Chairman Felsen opened the floor for public comment and asked anyone speaking to state their name and address for the record. There were no comments.

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

TABLED APPLICATION:

Application 2016-07P by Kristopher and Amy Stasiw requesting Site Plan approval to renovate an existing garage and bonus room into a 3-car garage with an in-law apartment. Property is located at 290 Stonybrook Road and is zoned Residential-30.

Kristopher Stasiw, Amy Stasiw and Joseph Stasiw appeared before the Board with Engineer Joe Ardieta of Vanguard Engineering. Mr. Ardieta explained that they have

revised their original application and are now proposing to demolish the existing garage and build a carriage house using the same footprint. The Stasiw's had submitted preliminary architectural drawings to the Board, and Amy Stasiw explained they will submit final drawings to the Building Inspector to approve if their Application is approved by the Board.

Details regarding the location of a retaining wall, the stairs, leach field and the grading were discussed. Mr. Ardieta stated he has received an email from the Monroe County Health Department approving the septic.

Chairman Felsen went through the list of items that the Planning Board required after the October 18th, 2016 Planning Board meeting when the Application was tabled. He noted that the revised SEQR form and updated drawings have been received. Ms. Stasiw stated she will be submitting the answers to the requirements outlined in the Zoning Law for Accessory Apartments and the Accessory Affidavit for the Accessory Apartment.

Chairman Felsen stated the Board would like a revised Site Plan Application filled out with the updated project listed as the garage being demolished instead of being renovated. Chairman Felsen noted that the original plan for the apartment size was 24' x 24', but now the size is being proposed as 27' x 30'.

Ms. Stasiw stated that currently there is a 24' x 24' space on the second floor. Building up from that is only going to be above the existing garage and off to the back where the shed is located.

Joseph Stasiw stated that after the October 2016 meeting, he understood that they meet the square footage requirements and they may have extra building space on the back of the building as an unfinished room, living space and then a door to an unfinished storage room.

Several Board Members agreed.

Chairman Felsen opened the floor for public comment and asked anyone speaking to state their name and address for the record. There were no comments.

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

Application 2017-03P by Glenn Thornton, agent for Jim Casey, owner of Comet Flasher, Inc., seeking Site Plan approval to construct three buildings for mixed uses, including the relocation of the Comet Flasher, Inc. headquarters. Property is located at 7575 West Henrietta Road and is zoned Limited Industrial.

Glenn Thornton and Jim Casey appeared before the Board. Mr. Thornton explained they are proposing to build three buildings. The parcel is a triangle shape and includes a federal wetland. Only a portion of the parcel can be used, and they are trying to maximize the space. The first building would be used to house Mr. Casey's company,

Comet Flasher, Inc., moving it from Henrietta. The other two buildings would not be built right away, and would house future tenants. The tenants are not identified yet, but they will be code-compliant tenants only.

Mr. Thornton stated that they have addressed Town Engineer Ewell's initial comments and are working on responding to his second comments and will resubmit to Town Engineer Ewell for his final review.

Mr. Thornton provided details regarding the septic system, the drainage ditches, the leach field and the retention ponds.

Jim Casey explained that his company Comet Flasher, Inc. handles traffic control through construction sites. The easiest way to explain it is anything orange that has to do with construction sites they manufacture, sell and install - construction signs, barrels, cones, etc. They also supply flaggers for job sites. Mr. Casey employs 8 people locally in Rush, and also has offices in Buffalo, Syracuse and Albany.

Board Member Sweet stated that depending on the future tenants interested in the other two buildings, the proposed size of the future buildings could change.

Mr. Casey replied if the size of the proposed buildings changes, they would be smaller, not larger. They are proposing the largest scenario. Mr. Casey reiterated the point that Mr. Thornton made – any future tenants would be code-compliant.

Board Member Sweet stated that his main concern is mosquitoes given the high number of settling ponds and heavy ground on the property and asked the applicant how long will this water be sitting?

Mr. Casey responded that the storm water retention ponds are only 6" deep. Also, the surface water currently there won't be there once the building is finished – the front area will be raised 3'.

Chairman Felsen noted that surface movement of winds prevents mosquitoes.

Chairman Felsen stated he would like Mr. Thornton to label on the Site Plan that the other two buildings are not approved for construction because the Planning Board can't approve them without first knowing what the use of the buildings will be. Chairman Felsen read aloud from the Code that all proposed uses and developments in a Limited Industrial shall be subject to Site Plan approval. Chairman Felsen stated that it is hard for the Board to approve the other two buildings without knowing what they are going to be used for.

Mr. Casey stated that he would like to build the buildings first and then seek out tenants. It is easier to rent a building if it's built first.

Board Member Sweet suggested that Mr. Casey build them and use them for company storage until tenants could be found.

Board Member Wurzer agreed, stating that Mr. Casey could use all the buildings for Comet Flasher, Inc., then when finding a tenant, make sure the tenants use fits the Code. Board Member Wurzer asked how many work vehicles are currently stored outside? Mr. Casey replied about 6 vehicles. Board Member Wurzer suggested Mr. Casey store the vehicles in a building and use that as a garage.

Mr. Thornton stated that if all three buildings were approved for Comet Flasher, Inc. use only, then tenant use could be subject to the Planning Board approval. At least Mr. Casey would be able to build all three buildings now.

Chairman Felsen advised the applicant that as the project falls in an Agricultural District, it is a Type 1 Action under the New York State Environmental Quality Review Act (SEQRA). The Planning Board sent letters to the following agencies, notifying them of the Board's intent to act as Lead Agency for purposes of reviewing this Application, and providing the agencies a 30-day period to consent or object to the Planning Board's intention to serve as Lead Agency:

- New York Department of Transportation
- Monroe County Department of Public Health
- Monroe County Water Authority
- New York State Department of Environmental Conservation
- United States Army Corps of Engineers
- Monroe County Department of Planning and Development

As the Planning Board received no objections from the above agencies, the Board will be acting as Lead Agency and will be completing Part 2 of the Full Environmental Assessment Form tonight.

Board Member Strock stated that he understands the applicant does not want to black top right away, but he is concerned about mud being tracked out and asked the Board how it feels to make black top a requirement before the last building is constructed.

Mr. Casey stated that he is all for black top but feels making it a requirement is extremely unfair.

Board Member Sweet asked the applicant how much traffic he anticipates. Mr. Casey replied he is not anticipating high traffic. He wants to keep things simple.

Mr. Casey stated that Building Inspector D'Alessandro has allowed him to peel topsoil back and build temporary access roads. Mr. Casey has a full-time employee that does excavating and site work, and he would like to keep him busy. How does the Board feel about him finishing the temporary access roads?

Chairman Felsen replied that he would prefer that Mr. Casey not do anymore of that until this Board actually gets to an approval state.

Mr. Casey asked if he can stockpile gravel. Chairman Felsen replied yes.

Chairman Felsen opened the floor for public comment and asked anyone speaking to state their name and address for the record. There were no comments.

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

DECISIONS:

Vice Chairman Morelli made a Motion **WHEREAS**; this Board has examined **tabled Application 2016-07P** by Kristopher and Amy Stasiw requesting Site Plan approval to remove an existing structure and replace it with a two-story building; the first floor of which will serve as a three car garage and the second floor as an in-law apartment, on the basis that the new structure will occupy the space of the existing structure that was in place before June 2002. Property is located at 290 Stonybrook Road and is zoned Residential-30; and the maps and other materials which were filed with the application, including the Short Environmental Assessment Form (Short EAF); and

WHEREAS, the proposed action is a Type II Action under the State of New York SEQRA laws requiring no further action by this Board.

Board Member Sweet seconded the Motion, and the Board polled:

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

Vice Chairman Morelli made a Motion to grant Site Plan approval of examined **Application 2016-07P** by Kristopher and Amy Stasiw conditioned upon:

1. The applicant complying with the requirements outlining the conditions in the Zoning Law for Accessory Apartments.
2. The applicant submitting a copy of the Accessory Affidavit for Accessory Apartments.
3. The applicant obtaining the approval of the Monroe County Water Authority, the Monroe County Department of Public Health, the Town Engineer, and addressing the comments of the Monroe County Department of Planning and Development.
4. The applicant submitting a revised SEQR Form from the engineer regarding the septic.
5. The applicant submitting a revised, updated Application Form.
6. The applicant revising plans to show recent utilities.

Board Member Sweet seconded the Motion, and the Board polled:

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

Chairman Felsen made a Motion to table **Application 2017-05P** by Brian Davin because of a number of outstanding items such as the applicant's non-compliance with:

1. The Town Engineer's Review.
2. The Monroe County Department of Planning and Development comments.
3. The Conservation Board's comments.
4. The rewriting of the bylaws or constitutions for the club.
5. That it's a members-only, not-for-profit club.

Additionally, there are concerns regarding:

1. Noise.
2. The number of portable toilets needed.
3. Hours of operation.
4. The maximum number of members, maximum number of automobiles, and the maximum number of spectators that could come to the site.

Further:

1. The use of portable toilets will need to be reviewed and either approved or commented on by the Monroe County Department of Public Health.
2. Whether overnight camping needs to be approved by the Monroe County Department of Health, and whether the food service needs to be approved and permitted by the Monroe County Department of Health.

The Board further makes a recommendation that this Board refer this application to the Town Code Enforcement Officer, the Town Building Inspector and the Town Attorney for their input regarding an existing operation of the outdoor remote control track that has operated for 9 years without approval, and that they also review the proposed indoor operation of the remote control track.

Board Member Wurzer second the Motion, and the Board polled:

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

At this time, the Board completed Part 2 of the Full Environment Assessment Form for Application 2017-03P by Glenn Thornton, agent for Jim Casey, owner of Comet Flasher, Inc.

Chairman Felsen made a Motion **WHEREAS** this Board has examined **Application 2017-03P** by Glenn Thornton, agent for Jim Casey, owner of Comet Flasher, Inc., seeking Site Plan approval to construct three buildings for mixed uses, including the relocation of the Comet Flasher, Inc. headquarters. Property is located at 7575 West Henrietta Road and is zoned Limited Industrial and;

WHEREAS, the proposed action is a Type 1 action under the State of New York SEQRA laws and;

WHEREAS, the Planning Board received no objections to act as Lead Agency from the following agencies:

-  New York Department of Transportation
-  Monroe County Department of Public Health
-  Monroe County Water Authority
-  New York State Department of Environmental Conservation
-  United States Army Corps of Engineers
-  Monroe County Department of Planning and Development

BE IT RESOLVED, that upon its examination and study of the Full Environmental Assessment Form, Completion of Part 2 of the Full 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.

Board Member Wurzer seconded the Motion, and the Board polled:

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

Chairman Felsen made a Motion to grant Site Plan approval to **Application 2017-03P** by Glenn Thornton, agent for Jim Casey, owner of Comet Flasher, Inc., seeking Site Plan approval to construct three buildings for mixed uses conditioned upon:

1. The proposed three buildings be used exclusively for Comet Flasher, Inc. and that all uses within the buildings comply with the Town of Rush Limited Industrial Zone, and that any change in the use of the buildings in the future shall require the owner / applicant to come before the Planning Board to ascertain whether the proposed change in use complies with the Town of Rush Limited Industrial Zone.
2. The applicant complying with Section 120-15 A (2) of the Town Code which states: *"If a specific use originally permitted within a Limited Industrial District is proposed to be changed to a separate, different and distinct use, application must be made to the Planning Board for a new determination of conformance, at which time the Board may require that any and all phases of the operation which have become detrimental to the neighborhood be corrected."*
3. The applicant also complying with Section 120-15 E General Provisions of the Town Code which states:

- (1) Outside parking of vehicles or any other machinery or equipment, except during business hours, shall be permitted only upon issuance of a special permit by the Planning Board in accordance with the procedure set forth in Section 120-69.*
 - (2) There shall be no outside storage of material, raw, processed or partially processed, in bulk or packages, except during actual construction on the site. There shall be no outside stockpiles or storage racks.*
 - (3) All equipment for the handling of material and processes shall be enclosed in a suitable building.*
4. The applicant obtaining the approval of the New York State Department of Transportation, the Monroe County Water Authority, the Monroe County Department of Public Health and the Town Engineer, and complying with the comments of the Monroe County Department of Planning and Development.

Board Member Strock seconded the Motion, and the Board polled:

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

With no further business, it was agreed by common consent that the meeting be adjourned at 10:24 pm.

Respectfully submitted,

Shivaun Featherman
Deputy Town Clerk