

The meeting was called to order at 7:30. Those attending were: Mike Iafolla, Chairman, Dick Wollmar, Sam Checovich, Russ McCann, and Chuck Gordon. Mr. Gordon was sitting in for an absent member, and was sworn in earlier in the day.

The Chairman stated that this was a special meeting just to hear the Irving Oil petition, Case #2000:13, **the applicant seeks a permit to Article V, Section 512, as all gasoline stations and service stations shall be nonconforming and require a permit from the Zoning Board of Adjustment.** The Chairman stated that for those who did not attend the previous meeting, that the Board did not understand this ordinance, and had asked for an opinion from Town Counsel, and had received the letter from John Ryan, dated May 30, 2000. This letter will become part of the permanent record for this file. The following is an excerpt from that letter.

“The New Hampshire Supreme Court has set forth certain criteria to be used where a nonconforming use is involved. These criteria are used to decide whether the nonconforming use is simply a continuation of a previous use, or is an expanded or different use. The criteria as applied to the Irving Oil proposal, are as follows:

- **To what extent does the new facility reflect the nature and purpose of the present gas station use. Are there new uses which are different?**
- **Does the new proposed facility have a substantially different effect on the neighborhood?**

The burden is on the applicant to satisfy the Zoning Board of Adjustment that the proposed uses do not differ from the present uses, and that the new facility will not have a substantially different effect on the neighborhood.”

The Chairman also stated that there was no hardship to prove, and the same appeal process would apply: the applicant would have 20 days to appeal if the decision was not in their favor.

Attorney John Colliander, representing Irving Oil, gave a presentation for the petitioner. He stated that the purpose of this relocation was to merge two lots and to convert the old lot into a green area, to alleviate traffic problems, and the new facility, which would be located on the new lot, would be larger because it would be a state of the art facility. He also stated that he didn't believe that Section 512 of the Zoning Ordinance applied to this petition because currently there is one less service station than in 1973 when the ordinance was adopted. Attorney Colliander felt that the Board should waive this ordinance and that the petition should go before the Planning Board for a Site Plan Review. The Chairman stated that our Town Counsel said that the ordinance did apply, and if there was a problem, the two attorneys could work out their differences on this issue. The Chairman also stated that the permit that the petitioner was seeking was based on the plan before them, if the plan changed, the permission would go away. The Chairman then indicated that he would open the subject for discussion.

Shirley Carter asked if the car wash was still included in the plan. Frank Montero, another representative for Irving Oil, stated yes, and that the existing facility was 2400 sf, the new would

be 4000 sf, they would be tearing down the old building and removing the old tanks (3) and replacing with two new tanks.

Michelle Peckham, 15 Kimberely Drive, gave a presentation on behalf of the 10 households and two abutters. She will supply the secretary with a copy of her presentation for the record. She stated that they felt that the car wash would present a significant problem for the neighborhood with the traffic, and cars waiting in line. The traffic impact on Glendale Avenue they felt, would have significant impact because of the access driveways. She also stated that this was an expansion of a nonconforming use.

The Chairman stated that only the sale of gas was considered a nonforming use, and Russ McCann agreed, stating that the retail use there is a conforming use.

Dave Flaherty, 17 Kimberly Drive, stated that he felt the lighting at the new facility, being closer to Glendale, would have a significant impact on the neighborhood, as well as the noise factor, which was already a problem and would be worse.

Shirley Carter, of the Conservation Commission, stated that the corner had flooding and drainage problems: the Chairman said that this would be a Planning Board issue, should the Zoning Board give permission to go forward.

Russ McCann asked had there been a traffic study done? Tom Gorel, of Gorel & Palmer, stated that there had: there were 223 trip ends, either in or out, and that 50% of these were drive-throughs (shortcuts), so the count would be around 110, and the study was done on a Wednesday. Mr. Hillier stated that they should do a traffic study on a Sunday, when there is increased business from out of state.

The Chairman then reminded everyone to keep their comments pertinent to Mr. Ryan's letter, quoted above, concerning "good cause shown." Mr. Peters had a question for Mr. Montero would the new gas tanks have enough capacity for a truck stop? The answer was no.

Harold Maihot, 10 Glendale, stated that the noise from the existing facility, particularly the trash pickup, was so loud that he couldn't open the windows on the side of his house facing Irving because the noise was so loud. The times of the pickup also vary from 4-5 a.m. or 9-10 p.m. very disturbing to neighbors.

Alan Brandt, Atlantic Avenue, stated that service stations include the selling of gas.

At this point, the Chairman stated the discussion portion of the meeting was over, the Board would now deliberate.

There was a motion made to deny the petition by Russ McCann, Sam Checovich amended and seconded the motion. The amended motion reads as follows: The Board finds that the petitioner meets "good cause shown" in reference to the first item on the criteria: *1. to what extent does the new facility reflect the nature & purpose of the present gas station use. Are there new uses which are different?* The Board felt that the new use was substantially the same. The motion to deny the petition was based on the second criteria: *2. Does the new proposed facility have a substantially*

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different effect on the neighborhood – the Board stated that the petition with the present plan as specified, did not meet the criteria for “good cause shown.” The motion passed, unanimously, 4-0. The Chairman stated the petitioner would have to improve their plan to address the noise, have a better traffic study, address the lighting situation, and pollution and runoff. He also stated that the petitioner, if they wanted to appeal, had 20 days in which to do so.

The meeting adjourned at 9:15 p.m.

Respectfully submitted,

Tina Kinsman
Recording Secretary