

NOTTINGHAM ZONING BOARD OF ADJUSTMENT

April 10, 2012

PUBLIC SESSION

Approved & Amended

PRESENT:

Mike Russo, Chair
Terry Bonser
Romeo Danais
Bonnie Winona
Robert Davidson

ABSENT:

Kevin Bassett, Alternate
Jim Crowell, Alternate

OTHERS PRESENT:

Ms. Lisa Sears, Land Use Clerk, Fire Chief Jaye Vilchuck, Diane Nugent, Chris Robinson, Bonnie Snell, Gail & Chris Mills, Linda & Jim Fernald, Joe Fernald, Judy Dougherty, Karen Davidson, Heidi Carlson, Tom Sweeney, John Morin, Bob Desrosiers

Chair Russo called the meeting to order at 7:04pm. The review of the minutes was moved until after tonight's case. Chair Russo explained tonight's procedure, noting that Mr. Danais was sworn in by Ms. Winona just before the meeting was called to order. Chair Russo called the case.

Case 12-01-V Application from James & Linda Fernald for a Variance to Article II Section C & E, *to lease to other vendors: ie Rymes Propane & Oils, Inc.*
The lot in question is located at 240 Stage Road, identified as Tax Map 29 Lot 8-1, and is owned by James & Linda Fernald

Chair Russo asked the Board for input and clarification on the applicant's request; a variance for a general 22-30 acre area on the property or if the applicant was requesting a Special Exception for the change of use for the leasing of the bulk propane tanks. There was much discussion among Board members. It was noted the bulk propane tanks use was not listed in the Nottingham Zoning Ordinance (ZO) as an allowable use so the applicant must additionally apply for a special exception for that use.

During discussions, Mr. Danais suggested that Rymes may need to be the one applying for the special exception, as they are the lease holders; then he suggested that maybe both of them need to apply? Ms. Winona noted that the name of the company did not matter but it was the use (bulk propane) and that the variance, if granted, would stay with the land. She added that she believes it's the land owner that needs to apply. She noted that she believes the applicant should be applying for a variance and a special exception. Mr. Danais disagreed that the landowner is the only one that can apply for the special exception that the leaser could apply. Ms. Winona stated that she believes that a tenant would need to be an agent of the owner and the proper paper work with signatures would be part of the application and they are not so that is why she believes this is not with Rymes as the applicant.

Mr. Bonser noted that the application before us was just for the variance. Mr. Danais noted that the application did not state anywhere that the use was bulk propane tanks. Chair

Russo noted that they could only rule on or discuss the request for the variance tonight. Mr. Fernald agreed.

MOTION by Mr. Russo to only hear the request for a variance for this application, as noted.

SECOND by Mr. Danais

VOTE 5- Aye. 0- Opposed – 0-Abstained MOTION PASSED

Mr. Fernald stated that they were looking for various ways to conduct business at the site since they closed the saw mill in 2008. He added that they have not talked to anyone other than Rymes at this point. Mr. Fernald also stated that if the Board where to grant the variance tonight that doesn't give him the right to go start construction on the propane tanks. He noted that they are still in the middle of the site plan review process with the Planning Board.

Mr. Russo asked for clarification on the amount of acres 22 or 30 that Mr. Fernald was asking for. Mr. Fernald noted that there is a total of 180 acres and there has not been a formal survey of the area yet but his intention was the open area. Chair Russo stated it was difficult for him to decide on this without it being better defined.

Discussion was on if there was a need for the commercial area to have frontage on the road. Later in the meeting, members of the Board looked up the requirements in the ZO. Mr. Bonser stated that he didn't believe there was a need for Mr. Fernald to have the land surveyed for this Board when he will have to go to back to the Planning Board. Chair Russo stated that he would need something more specific to see if it met the criteria and to base his decision on. Mr. Danais agreed that the plan was not clear without any bounds or boundaries noted on the plan it is difficult to understand exactly what Mr. Fernald is asking for. Mr. Fernald noted that the wetlands buffer along the road will be protected but asked for guidance from the Board.

Ms. Winona explained that they have to decide if the applicant has satisfied certain criteria and she too would need more specifics on the plan in order to do so.

Discussion moved to some safety requirements that would be needed for a bulk storage facility and the possibility of moving the tanks further into the woods as a reference for when/if this case comes back to the Board for a special exception. It was noted that if the applicant was going to be made to delineate details of the plan for the variance then he should probably delineate details on the plan for the special exception at the same time. Mr. Fernald agreed and stated he would like to get input from the Planning Board as well.

Chair Russo also noted that the Fire Chief would need input as well and asked Mr. Fernald to get his input as well. A brief discussion on hazard scenarios with evacuation zones was discussed. Chair Russo suggested Mr. Fernald have a conversation with the Fire Chief and a surveyor before returning to this Board.

Mr. Danaïs asked about the history of the property and what variance was already issued. It was noted that there is a variance for the saw mill operation. It was noted that he is seeking a variance because the use will change and if granted any of the noted uses in the ZO would be allowed, if he wanted a use other than one listed (ie the propane tanks) he would have to apply for a special exception for that new use.

A time frame to continue the case to allow Mr. Fernald to submit a better detailed plan was discussed.

MOTION by Mr. Bonser to continue case #12-01-V for a variance to May 15, 2012 at 7:00pm.

SECOND by Ms. Winona

VOTE 5- Aye. 0- Opposed – 0-Abstained MOTION PASSED

Chief Vilchok asked to read a letter from McGrath Law Firm dated March 7, 2012 into the record. He also submitted copies of letters originally submitted to the Planning Board & Board of Selectmen on the issue of safety.

Mr. Fernald wanted it noted that his name was not on the letter from the law firm just read. He asked the Chief if he intended to work with him on this matter. He stated he did and always has intended to.

Mr. Mills asked if when the meeting is reconvened is it for the variance or special exception. Mrs. Sears noted that right now it is just for the variance but Mr. Fernald can apply for the special exception and notify abutters and that could possibly fall on the same night. Mr. Fernald confirmed that is what he intends to do.

Mrs. Fernald and Joe Fernald asked the Board for other issues/conditions that the Board may have with this application or the one for the special exception. The Board members discussed items that they would like to see to help them make their decision such as detail plans. It was noted that all the requirements are listed in the ZO and or they could consult Mr. Colby. Chair Russo closed the public hearing.

Review of Minutes

October 18, 2012

MOTION by Mr. Danaïs to approve the minutes of October 18, 2012 as written

SECOND by Mr. Russo

VOTE 4- Aye. 0- Opposed – 1-Abstained MOTION PASSED

Election of Officers

MOTION by Mr. Danaïs to nominate Mr. Russo as the Chair.

SECOND by Mr. Russo

VOTE 4- Aye. 0- Opposed – 1-Abstained MOTION PASSED

MOTION by Ms. Winona to nominate Mr. Danaïs as the Vice Chair.
Mr. Danaïs declined.

MOTION by Mr. Danaïs to nominate Ms. Winona as the Vice Chair.

SECOND by Mr. Davidson

VOTE 4- Aye. 0- Opposed – 1-Abstained **MOTION PASSED**

The Board did not elect anyone for the position of Clerk.

Annual Review of Bylaws

The Board reviewed and had no changes. Mrs. Sears will update the last date of review.

MOTION by Mr. Bonser to accept the bylaws as written.

SECOND by Ms. Winona

VOTE 5- Aye. 0- Opposed – 0-Abstained **MOTION PASSED**

Alternate Members

The Board discussed the need for more alternate members.

MOTION by Mr. Russo to nominate John Morin as an alternate to the ZBA for a term of 3 years.

SECOND by Mr. Danaïs

VOTE 5- Aye. 0- Opposed – 0-Abstained **MOTION PASSED**

The Board discussed asking former member Peter Landry as an alternate. Chair Russo noted that he had spoke with Mr. Landry about this.

MOTION by Mr. Russo to nominate Peter Landry as an alternate to the ZBA for a term of 3 years.

SECOND by Mr. Danaïs

VOTE 5- Aye. 0- Opposed – 0-Abstained **MOTION PASSED**

MOTION by Mr. Russo to adjourn the meeting at 8:08pm

SECOND by Mr. Danaïs

VOTE 5- Aye. 0- Opposed – 0-Abstained **MOTION PASSED**

Respectfully Submitted,

Lisa L. Sears
Land Use Clerk

186 *These minutes are subject to approval at a regularly scheduled Zoning Board of*
187 *Adjustment meeting at which time the above minutes are corrected or accepted.*