

NOTTINGHAM
ZONING BOARD OF ADJUSTMENTS
August 12, 2014

Accepted:9-2-2014 meeting

Members Present: Michael Russo, Chair; Terry Bonser; Robert Davidson, Kevin Bassett, Alternate,

Members Absent: Bonnie Winona-MacKinnon, Vice- Chair; Romeo Danais, Alternate

Others Present: JoAnna Arendarczyk, Land Use Clerk; Paul Colby, Building Inspector; William Netishen, Citizen; Linda and Jim Fernald, Applicants; Nick Cricenti, Engineer; Chuck Cosseboom, Rymes Propane; Dan Corley, Rymes Attorney

Mr. Chairman called the meeting to order at: 7:03pm

Opened Public Hearing at 7:04pm

Public Hearing Case

Mr. Chairman Read the following Public Hearing Notice:

Case 14-006-AA- Application from Rymes Heating Oils, Inc.- Chuck Cosseboom and James S. and Linda R. Fernald for an Appeal to an Administrative Decision to deny a building permit. Tax Map 29 Lot 8-1. 240 Stage Rd, Nottingham NH 03290.

Mr. Chairman informed those present of the operating procedures and informed the applicants that they may choose to continue the hearing to a later date if desired due to the lack of a full board for this hearing.

The applicants decided to continue with tonight's hearing.

Dan Corley introduced himself as the attorney from McGrath Law Firm.

Chuck Cosseboom introduced himself and Jim Fernald.

Mr. Corley explained some of the history in the process of trying to obtain a building permit to construct a Bulk Liquid Propane Distribution Plant on the Fernald's property at 240 Stage Road.

Mr. Corley read the list of reasons for the denial as listed in a fax dated 10 March 2014, from Nottingham Fire Chief, Jaye Joseph Vilchock. (*See file for complete letter and other correspondences*)

1. Source of required water supply
2. Site access limitations
3. Internal (Rymes) operating procedures for dealing with an emergency
4. Failure to include special protection provisions

Mr. Corley stated that those items are what they wish to discuss at this hearing.

Mr. Chairman stated for the Board to consider the following before moving forward:

- The Building Permit was accessed on March 10- Denied on March 21
 - Received by Rymes via certified mail on March 26
- Incomplete appeal sent on April 28
 - Town operating procedure is to accept appeal within 30 days this appeal was sent in 32 days
 - Appropriate appeal application was mailed to applicants and were received by Rymes on May 9

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- Completed appropriate Appeal packet was received on July 8
 - Full 60 days after a secondary window
 - 90 days after building permit was denied

Mr. Corley explained that usually engineers communicate to resolve issues that need to be taken care of and that did not happen with this case.

Nick Cricenti from SFC Engineering, introduced himself and spoke about his involvement- designed the tank, prepared the plans, and prepared the draft for the fire safety analysis. Presumably it was their plans that were reviewed by the consulting fire safety engineer. The Denial letter was the only correspondence to their work. They never received a copy of the report or anything else, which was surprising to the engineer.

Mr. Chairman stated that those things happened during the planning process.

Mr. Fernald mentioned that he received a letter regarding 21 things to be addressed however, Mr. Cosseboom didn't receive that letter so Mr. Fernald forwarded it on to him. Mr. Cricenti never received the letter either. There has been no communication from the consulting fire safety engineers either.

Mr. Cricenti pointed out that they never received the report from the 2nd consulting fire safety engineer the Town hired.

Mr. Colby informed the Board and the applicants that he had the report from the 2nd engineer. He just received it from the new Town Administrator today when they were reviewing the file for the case. The report lists 24 items of deficiency. The report was sent to the Fire Chief who passed it on to the former Town Administrator. Neither Mr. Colby nor the new Town Administrator had seen the report prior to this meeting date. This report is what the Fire Chief based his decision for denial on. There were no other CC's on this report just the Fire Chief.

- Mr. Chairman requested copies of the report be made for the applicants and the case file.
 - *Copies made immediately following the Public Hearing*

Mr. Chairman stated that the issue involves the Denial which has been brought forth 90 days after the Denial had been issued. He feels that a corporation and a law firm would know to get their appeal in within the 30 day appeal window. The process for this meeting is not about arguing what was said or what was done it is about the Denial.

Mr. Corley stated that there are problems on both their side of the case and the Town's side. They would like to work it all out.

Mr. Cosseboom requested the opportunity to speak and put the issue in perspective. He stated that this process has been going on for about 3 years. He has attended almost 30 meetings regarding this case. He stated that there is a pattern of misinformation and a lack of passing information and responses. He feels that the 30 day window should be given some leniency considering the pattern they've experienced from the town. He then stated that he's:

- offered underground tanks
- went to Selectman's meetings to resolve the issue
- spent many hours on this project
- water isn't an issue
- asked repeatedly for details of what is wanted- no one will give an answer

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- Given an operating plan which mirrors the Texas Eastern Pipeline operating plan for emergencies. – which suffices everywhere else in NH but Nottingham, NH

Mr. Cosseboom stated that the planning board had a vote on the Plan for the Bulk Storage Facility therefore in his opinion this should not have been denied.

Mr. Fernald spoke about the process from the Planning Board's approval.

Mr. Davidson then spoke regarding the fact he's been a vocal person regarding the safety concerns with the location being close to Nottingham Elementary School and the Fire Department. He spoke to the 90 day issue and that just before the 30 day mark if he hadn't received anything he would have picked up the phone to find out what was going on. He said that the Zoning Board can't make allowances for one case, if they did they would have to do it for others as well.

Mr. Bonser asked who received the denial letter from the Building Inspector.

Mr. Cosseboom stated that he did. He then sent a copy to the law firm.

Mr. Cosseboom mentioned that he hasn't met with the Fire Chief since the first few meetings in the beginning. The Fire Chief has not spoken with him or his attorney only the Town's attorney. He then pointed out that a Zoning Board of Adjustments is asked to make exceptions all the time.

Mr. Chairman agreed that is true.

Mr. Corley asked the Board to use its discretion to extend the appeal as time deemed.

There have been delays on the Town's side as well.

Mr. Chairman stated that if the appeal was based on not receiving the engineers report he would continue the hearing after the report was reviewed. The hearing is based on appealing the Denial and the appeal has been received 90 days later.

Mr. Chairman also stated that he is confused as to what grounds the Fernald's are basing their appeal on regarding the Denial because the applicant is Rymes Propane.

Mr. Colby states if you answer that you are the applicant than Rymes Propane has falsified their application. According to the Building Code the Denial goes to the applicant. That is why you did not receive a copy of the Denial.

Mr. Fernald responded "So we are not the applicant."

Mr. Chairman stated that if the Board denies the appeal than it opens another 30 day window for the applicants to take the case to Superior Court. If Superior Court agrees with the Zoning Boards decision than the applicants start over. If Superior Court states that the Zoning Board needs to hear the case than we will reopen the case.

Mr. Davidson stated that we are trying to work with you and trying to get this resolved.

Mr. Bassett stated that it looks like Superior Court is necessary.

Mr. Corley stated that if there are an additional 24 items the appeal should start now.

Mr. Bonser stated that if the appeal to the Denial letter had arrived on time than we could have delayed the appeal. Given the report and worked with the case.

Linda requested the dates of correspondences.

Linda stated that they did make contact and there was a back and forth regarding the lack of info.

Lawyer stated that with the report just being handed to them he believes 30 day window should start now.

Mr. Davidson disagrees and further explained his previous reasons.

Mr. Corley asked why they are receiving that report now.

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Mr. Chairman said that question is for the Fire Chief.

Mr. Cosseboom encourages the Board to take a look at the entire process they've gone through and see how unfairly they've all been treated. He challenged the Board to pick out the RSA of New Hampshire that states we follow the National Fire Protection Agency Code.

Mr. Fernald stated he's never been treated so poorly in all the other cases he's presented to the town as he has with this process. It started with the Planning Board and ended with the Select Board and Fire Chief but no one has the gumption to do anything about this issue thus far.

Mr. Chairman stated that there is a lot on record.

Mrs. Fernald stated that "when a board has the opportunity to make an exception that would save the Towns people...money whether it be from attorney's fees or whatever in a process that should go smoothly I think it's stupid."

Motion was made by: Mr. Chairman to deny the appeal based on it being outside the appeal window.

Seconded by: Mr. Bonser

Vote: 4-0-0 motion passed

Public Hearing closed at 7:44pm

Minutes

July 15, 2014

Motion was made by: Mr. Chairman to approve the minutes.

Seconded by: Mr. Bonser

Vote: 3-0-1 motion passed

Adjournment

Motion was made by: Mr. Chairman to adjourn.

Seconded by: Mr. Davidson

Vote: 3-0-0 motion passed

Adjourn at 7:50pm

Respectfully Submitted,
JoAnna Arendarczyk
Land Use Clerk