

TOWN OF EAST KINGSTON, NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENT MEETING MINUTES

April 22, 1999

FILE

AGENDA

7:30 Thomas J. Brandolini – 17 Rowell Road – Appeal from Administrative Decision (1999-01)

Members attending: Chairman John V. Daly, David Ciardelli, Norman Freeman and Alternates Peter A. Riley and Charles F. Marden..

Absent: David C. Boudreau and Edward Cardone.

Others attending: Raymond R. Donald – Selectman, Atty. Dan Jones, Richard A. Smith Sr. – Planning Board Chairman, Thomas J. Brandolini and Susan Debus.

Thomas J. Brandolini–17 Rowell Road– Appeal from Administrative Decision: Chairman Daly opened the public hearing at 7:49 p.m. for Thomas J. Brandolini of 17 Rowell Road. The applicant is requesting an Appeal from Administrative Decision regarding his automotive repair business automotive repair business “Haverhill Tune-up“ in relation to the January 25, 1999 Board of Selectmen decision to 1) at the recommendation of the Planning Board, deny the application for a grandfathered business; and 2) deny the application for a home occupation permit based on the fact that the proposed type of business is clearly not part of the home occupation rules (not a permitted use).

The applicant is also requesting an Appeal from Administrative Decision regarding his automotive repair business “Haverhill Tune-up” in relation to the January 21, 1999 Planning Board decision to recommend that the Board of Selectmen deny the application for a grandfathered business based on the lack of sufficient proof of the existence of the business prior to January 6, 1989, when the ordinance went into effect.

Chairman Daly noted that the applicant has raised an issue about the number of voting members present, (at most four members) and that the applicant requests a hearing with a minimum of five voting members present. He also noted that Attorney Jones had expressed an objection to his [the chairman’s] participation in the hearing. He [Jones] expressed the view that because the chairman had previously rendered legal advice to the Town on the matter before the board, he should be barred from any participation in the hearing. The Board taking this request into consideration continued this public hearing until Thursday, May 13, 1999 at 7:30 p.m. at the Town Offices. He then stated that this announcement would serve as notification to all abutters.

Atty. Dan Jones inquired if all the ZBA members received copies of the minutes from both Planning Board meetings held with Mr. Brandolini.

Chairman Daly responded affirmatively and then without any objections, he closed the public hearing for Thomas J. Brandolini.

OTHER BUSINESS

Minutes: The Board reviewed the minutes dated November 17, 1998 and without any objections approved them for the record.

Chairman and Vice Chairman Positions: Chairman Daly opened the nominations for both the Chairman and Vice Chairman positions on the Zoning Board of Adjustment.

MOTION: Mr. Ciardelli motioned to nominate John V. Daly to the position of Chairman for a term of one year to expire in April 2000. Mr. Freeman seconded. With no further discussion, the motion carried 4-0 (Chairman Daly abstaining).

MOTION: Chairman Daly motioned to nominate David Ciardelli to the position of Vice Chairman for a term of one year to expire in April 2000. Mr. Marden seconded. With no further discussion, the motion carried 4-0, (Mr. Ciardelli abstaining).

OSP Conference: The Board noted the 1999 schedule for the Office of State Planning’s Annual Conference. Members were advised to notify the recording secretary if they planned to attend.

Rules of Procedure: Chairman Daly stated that the ZBA Rules of Procedures adopted in 1991 need to be updated. He noted that a provision to limit the time for the submission of appeals to the Board should be adopted. As it stands, RSA 676:5 states:

Appeals to the board of adjustment concerning any matter within the board's power as set forth in RSA 674:33 may

be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board a notice of appeal specifying the grounds thereof

He stated that since the ZBA has not adopted a specific time period for an applicant to appeal to the Board, the "reasonable time" language could become an issue.

Mr. Donald requested a copy of Rules and Procedures be submitted to the Selectmen's Office once amended.

The Board then took up discussion on the ZBA's role in an Appeal from Administrative Decision. It was noted that the Board of Adjustment does not have the authority over the Board of Selectmen or enforcement official on whether or not to enforce the ordinance, but that it does have the authority to hear administrative appeals if it is alleged that there was an error in any order, requirement or determination made by the official. The ZBA has the authority to hear administrative appeals of decisions made by the Planning Board which are based on their interpretation of the zoning ordinance. And, the ZBA shall have all the powers of the administrative official from whom the appeal is taken.

With no further discussion, Chairman Daly adjourned this April 22, 1999 Zoning Board of Adjustment meeting at 8:10 PM.

Respectfully submitted,

Catherine Belcher

Minutes completed and on file April 24, 1999.

approved May 13, 1999