



PLANNING BOARD
TOWN OF EAST KINGSTON
New Hampshire

2007-2008
David F. Sullivan, Chairman
Edward Warren, Vice Chairman

MINUTES
(Public Hearing of 19 February 2009)
7:00pm

AGENDA:

- ◆ **Call to Order**
- ◆ **Approval of Minutes** for January 6th, 2009 and January 15, 2009.
- ◆ **Public Hearing** for a 2-lot subdivision for Julie Turner, 87 Haverhill Road, (MBL 10-04-04) (EKPB #09-01)
- ◆ **Other Board Business**

CALL TO ORDER: The regular meeting of the East Kingston Planning Board was called to order at 7:07 PM.

ROLL CALL: Mrs. Belcher called the roll.

Members present – Dr. RA Marston, Mr. R Morales, Mr. D Sullivan, Mr. E. Warren.
Mr. D Pendell, ex-officio was absent.

Alternate members present - Mr. J Cacciatore was present; Mr. R Forrest was not in attendance.

Advisors present – Julie LaBranche, Planner, Rockingham Planning Commission (RPC)
Mr. R Donald, East Kingston Building Inspector
Mr. Salvatore Richard, East Kingston Fire Chief

Others present: Dennis Quintal, PE, applicant's representative; Julie Turner, applicant; John Cooke, abutter; and residents Dan Guilmette and Gary Hinz.

CALL TO ORDER

Chairman Sullivan called this February 19, 2009 East Kingston Planning Board meeting at the Pound School building, 41 Depot Road to order at 7:03 PM with the roll call.

Board Business

Noting the absence of Ex-Officio Pendell and that no one may vote in his absence, Chairman Sullivan announced a four-member voting panel for the evening (Marston, Morales, Sullivan, & Warren).

MINUTES

Board members reviewed the minutes dated January 6, 2009 and January 15, 2009.

MOTION: Mr. Morales **MOVED** to approve the East Kingston Planning Board minutes dated January 6, 2009 and January 15, 2009 as presented. Mr. Warren seconded. With no further discussion, the motion carried 4-0.

PUBLIC HEARING FOR 2-LOT SUBDIVISION - JULIE TURNER 87 HAVERHILL ROAD –
MBL# 10-04-04 – EKP# 09-01

Chairman Sullivan opened the public hearing for Julie Turner's 2-lot subdivision proposal at 7:05 PM recognizing Dennis Quintal, PE representing the applicant.

Mr. Quintal provided an overview of the application noting this subdivision plan was before the Board three to four years ago with Jim Lavelle, LLS presenting. At the time, Mr. Lavelle received state subdivision approval; however the Town had some concerns with the slope and drainage of the parcel. For reasons unknown to him, Mr. Quintal stated the plan was left on the table and ultimately denied by the Planning Board for non-activity. Ms. Turner has since requested he (Quintal) produce a new plan from the previous engineering plan.

He went on to describe the lot as being located on Haverhill Road just north of the route 107-A intersection. His client is proposing a two-lot subdivision with the existing house lot to measure over 3 acres and the proposed new lot 2.14 acres. The contour of both parcels is fairly steep. The plan depicts a proposed location for well and septic with test pits as well as proposed new lot lines. Many of the slopes are over 10% with some over 15%. He then noted that the Master Plan recommends not developing on slopes over 15%.

He opined that with proper engineering and drainage, this proposal could work. Continuing to explain the background of this proposal, Mr. Quintal stated that during the review process he was directed to have a geo-technical engineer review the parcel to assure the slopes were intact. A soils test was conducted in April 2008. The Town Engineer reviewed the slope and grade and made recommendations to move the house location to a lower position on the lot resulting in less cuts to the site. A storm water retention pond was also designed on the front of the parcel to address water run off.

The geo-technical report indicated the parcel was suitable for a house and that no bedrock was found during the test pits. Ditch and swale recommendations that included a perimeter drain plan were also made and incorporated into the current plan.

Mr. Quintal then addressed the written comments from the Town Engineer in correspondence dated February 14, 2009. He noted that the Town Engineer's comments were mostly directed towards predevelopment versus post development. The property owner plans to do more plantings on the larger lot as well as reclaim the slope in front of her house. These items were not addressed with Town Engineer.

Response to Town Engineer's comments:

1. Rip-rap check dams and swales will be added to the plan. The purpose for these is to minimize the velocity of the water coming down the hill.
2. Silt fencing will be installed on the downhill side of the construction.
3. A stone-lined swale will be added along the uphill side of the driveway.
4. Grading around the culvert pipe would open up the existing hole, making it longer so water can go through a sedimentation area before entering the pipe. A stone berm on each side will be added to minimize sediment.

5. Additional grading right off the state highway will be done.
6. DOT Division 6 agent indicated the proposal would not be a problem and would send a written statement confirming

Mr. Quintal stated he contacted Jay Stevens (Town Engineer) regarding his comments. He (Quintal) is not convinced a meeting is necessary. Mr. Stevens will not be back in the office until March 2nd. In the meantime, he will incorporate all the changes to the plan. Once Stevens returns, he (Quintal) hopes to get a clean letter from him as well as the letter from the highway department.

He then noted the applicant is seeking a waiver from Subdivision Regulations Section III.C and Section VII.L, both relative to steep slope requirements. These requests are based on the slope soils being stable, and silt fencing design and erosion matting. He opined that slope stability is being addressed, as well as the state highway slope requirement via the DOT.

QUESTIONS AND COMMENTS

Mr. Morales inquired about the driveway – whether or not it would be paved or gravel. He noted the Town Engineer is recommending it be paved, though he (Morales) prefers it be gravel.

Mr. Quintal responded that he too, prefers gravel. He is proposing to pave only the parking area but not the entire driveway; this will minimize the impervious surface area. There was some discussion on a new type of impervious asphalt; however, it would require an under-pavement drainage system.

Mr. Warren questioned what degree of land clearing would be required. Mr. Quintal iterated some clearing was needed. He noted that the logging road that runs along side the parcel is still used by snowmobiles and ATVs.

Abutter John Cooke of 108 Haverhill Road reported that the log road produces a lot of run off on to his property – both water and sand, and stated his concern is with the additional run off that might be produced from the proposal. He asked where the run off would ultimately end up.

Mr. Quintal stated that he is obligated to match the existing conditions. Right now most of the water drains into a culvert – some in the direction of Mr. Cooke's property. He will work to mitigate the entire run off away from his property.

Chairman Sullivan noted that the log road originally had water bars installed, but they have since flattened due to usage. He then asked if the run off from the log road could be redirected to the water basin.

Mr. Quintal replied it is part of the plan. He then noted the drainage calculations show the plan meets the pre-existing conditions. The log road will be taken out and the culvert will handle the extra flow. Concern regarding the 50-year storm was raised to which Mr. Quintal stated the proposed drainage plan will prevent the water from cresting and going over the road – this is all part of the Town Engineer's review.

Mr. Warren stated he had two questions relative to the steep slopes; 1) Does the Board have authority to grant a waiver, and 2) how is this proposed drainage plan different from the Clark property on Burnt Swamp Road?

Mr. Quintal responded that the Board does have authority to grant waivers and that this plan is proposing one house where the Clark property has seven. This plan is being reviewed by the Town Engineer.

Building Inspector Donald further explained that the Clark property never underwent its reclamation plan as was required. Additional swales are to be installed. He stated one cannot equate one development to another – there won't be any more water on the Turner property than is already there. He concluded that he is satisfied with the Turner plan.

Fielding a question from Mr. Cooke, Mr. Quintal stated the existing ditch will be extended to accommodate the run off – it will act like a pond. He added that no water should be sitting in that retention area beyond a 24-hour period.

Culvert maintenance was discussed. The basin would require annual mowing and stabilization checks after each storm event. This would be the responsibility of the homeowner.

RPC Planner LaBranche inquired if snowplowing would affect the new detention basin and if there was an erosion and sediment plan. Any phasing?

Mr. Quintal responded the basin is located 25 feet away from the road, thus no problems with snowplowing, and the plan includes a maintenance schedule, which would also be followed during construction. He continued to say that no phasing is planned – the construction would be done all at once. They would use hay bales to get grass growing and get the sediment base stabilized. They expect only ½ acre of site disturbance.

Planner LaBranche noted that once steep slopes are disturbed, ground water might seep which could result in a lot of water coming off the hill during construction. She recommends the notes for the sequence plan and the placement of hay bales be noted on the plan. She then inquired if there would be any additional plantings.

Mr. Quintal went on to describe the geo-fabric that would be used for assisting during flash flood times. The product is used like a carpet and is seeded underneath. He also reviewed the detention area/containment process and noted as with all detention ponds located on private properties, the responsibility to maintain them belongs to the property owner. He stated the State has new rules on subdivisions requiring alteration of terrain. On large projects the State requires sedimentation basins and water quality plans relative to groundwater recharge.

Mr. Quintal stated and Mr. Morales confirmed that Town Officials can enforce detention pond upkeep. The Town has the authority to maintain the pond itself and bill the homeowner if necessary.

It was noted that jurisdiction on the plan had not yet been invoked. Noting the application was complete, Chairman Sullivan called for a motion.

MOTION: Mr. Morales **MOVED** to invoke jurisdiction on Julie Turner's 2-lot subdivision plan for MBL # 10-04-04, EKP case 09-01. Mr. Warren seconded. With no further discussion, the motion carried 4-0.

Planner LaBranche inquired about a 100-year flood plan and where the water would go to which Mr. Quintal responded the water would travel in front of Mr. Cooke's property to the 107-A junction then to the Pow Wow River. His goal is to meet the 50-year condition, which would direct the water down the street but not across it.

With no further questions from abutters, Chairman Sullivan closed the floor to abutter comments. Noting that Mrs. Belcher served on the Planning Board when Ms. Turner first presented conceptual subdivision plans, Mr. Quintal asked if she would provide the Board with the previous Board's remarks and concerns.

Mrs. Belcher indicated the previous Board expressed their concern with the slope of the property, specifically in reference to the recommendations of the Master Plan. They were, however, amenable to further consideration upon the submission of drainage plans and input from the Town Engineer and other advisors. There was no clear consensus as to whether the Board would or would not approve a formal application.

WAIVER REQUESTS

Moving on the matter of the waiver requests, Chairman Sullivan directed the recording secretary to read aloud the waiver provisions as outlined on page 20 of the Subdivision Regulations and identified as Section IV – Granting of Waivers.

A. General. Where the Board finds that extraordinary hardships, practical difficulties, or unnecessary and unreasonable expense would result from strict compliance with the foregoing regulations or the purposes of these regulations would be served, it may approve waivers to these regulations. The purpose of granting waivers under provisions of these regulations shall be to insure that an applicant is not unduly burdened as opposed to merely inconvenienced by said regulations. Such waivers will be entertained and acted upon by the Board only at a properly notices public hearing, or for a lot line adjustment, at a duly notices public meeting. The Board shall not approve any waiver(s) unless a majority of those present and voting shall find that all of the following apply:

- 1. The granting of the waiver will not be detrimental to the public safety, health or welfare or injurious to other property and will promote the public interest.*
- 2. The waiver, will not, in any manner, vary the provisions of the East Kingston Zoning Ordinance, Master Plan and Official Maps.*
- 3. Such waiver(s) will substantially secure the objectives, standards and requirements of these regulations.*
- 4. A particular and identifiable hardship exists or a specific circumstance warrants the granter of a waiver.*

B. Conditions. In approving waivers, the Board may impose such conditions as it deems appropriate to substantially secure the objectives of the standards or requirements of these regulations.

C. Procedures. A petition for such waiver shall be submitted in writing by the applicant with the application for Board review. The petition shall state fully the grounds for the waiver and all the facts relied upon by the applicant. Failure to submit petition in writing shall require an automatic denial.

The applicant is seeking a waiver from Subdivision Regulations III.C and VII.L.

III.C: Subdivision and development shall be harmonious with the Town and its environs. Developments must contribute to a rational and safe transportation system, provision of appropriate recreational opportunities, and must not be inconsistent with the recommendations of the East Kingston Master Plan.

VII.L: Steep slopes are described in the East Kingston Master Plan Natural Resources Chapter Section 7. All development, and its associated infrastructure requirements, is prohibited on slopes of 15% or greater. The construction of roadways is prohibited on slopes 10% or greater.

Mr. Warren stated that based on his understanding of the waiver process, the Board must determine whether or not the applicant is burdened or merely inconvenienced before moving on to the remaining waiver provisions.

Mr. Morales opined that the applicant is, in fact, unduly burdened. They own a piece of property with over 15% slope and have the right to use it if at all possible. All the other requirements have been met and there would be no undue harm in granting them (waivers).

Mr. Warren replied that the applicant did a good job addressing the drainage, but they need to address the Master Plan as well.

Mr. Morales stated the Master Plan has a vision in mind and the Board needs to ask if those same issues are still being met. Do they need to enforce the Master Plan 100%? He believes the Master Plan objectives can still be met while granting some relief to the applicant. If the Town Engineer is satisfied, then he (Morales) is too.

Building Inspector Donald added that when the Turners were originally issued a building permit for the existing house there were no restrictions relative to slope in that process. Four years ago when they first brought the subdivision plan to the Board, concerns were raised about the slope as part of the subdivision consideration process. The proposed excavation for this project will bring the lot into compliance for subdivision standards. The second lot will have smaller grades than the original lot, which did not require adherence to grade standards. He opined that the intent is met via excavation.

Fire Chief Richard asked how long it would take to excavate, lay down the matting and get the clover growing to which Mr. Quintal replied a matter of weeks.

Chief Richard went on to say that the run off problems with the Clark property are part of a long-term project, which will take several years to address. The Turner proposal will be completed in several weeks. He noted the water source to the proposed lot is plus or minus 1200 feet and that he would prefer to fight a fire at the new lot versus the existing home up on the hill.

Mr. Morales stated the current proposal is for one house – this is not a large subdivision. The Master Plan is concerned with large developments. He believes the concerns raised in this proposal have been addressed.

Mr. Warren iterated if the Board is in agreement that granting the waivers do not violate the Master Plan, then the next requirement in the waiver process would be to set conditions.

Discussion on conditions resulted in the Board agreeing that any conditions should be noted in a conditional approval and not attached to the waiver.

Mrs. Belcher asked if Board members actually visited the site and really looked at where the cut in the hill was being proposed. Members indicated they had driven by the site and looked to which she responded a closer look at the hill might be warranted.

Mr. Quintal stated that lots of towns in New Hampshire have homes on hills. The Town Engineer looked at this proposal and the Board cannot stop development in town. He went on to say that zoning was set up and the applicant has met the requirements. Homeowners should have the right to do what they want to do with their properties.

Mr. Warren noted that the RPC handed out Innovative Land Use books that outlined recommendations for steep slopes. He has not had the opportunity to review it all.

Planner LaBranche stated she would like to see conditions to the final approval that address after-construction maintenance and slope stabilization.

MOTION: Mr. Morales **MOVED** to grant a waiver from Subdivision Regulations Section III.C as requested for EKPB case 09-01. For the purposes of discussion, Mr. Warren seconded.

DISCUSSION: Mr. Warren stated he had concerns with the Master Plan issue – granting of the waiver is supposed to be consistent with the Master Plan. Will precedence be set if this waiver is approved and how will it affect the next application that comes down the road? Furthermore, what is the cut off for the argument that this is not a large development – two, three or four houses?

Mr. Morales replied that waivers are granted on a case-by-case basis. The Board cannot play “what if.” Though he shares Mr. Warren’s concerns, the Master Plan was written by men and a perfect document can’t be written for all cases. One way to measure whether leniency should be given is to ask if granting the waiver would hurt anyone or fail to protect the citizens.

Mr. Warren noted the Board did hire a professional engineer to review the application – he will go by his recommendations.

Mr. Quintal stated that the major concerns with the Clark development was that a road was being cut into the slope disturbing the hill. Some of the homes in that development had similar conditions as this proposal.

Mr. Morales reiterated that the Clark development never performed the reclamation. Waivers were granted for that proposal, but the problem lies with the fact that the Clark development didn’t do what they were supposed to do.

Chairman Sullivan clarified for the record that although the Board is referring to the “Clark” development, Mr. Glenn Clark is not the owner nor the developer of the property.

Mr. Cooke stated that the proposed driveway swale would go right by his front door.

Mr. Quintal responded the swale is super elevated at the curve. Water will be directed to the detention area – crowning at the road’s edge and dispersing in both directions.

With no further discussion, Chairman Sullivan called the vote. The motion carried 3-1 (Mr. Warren opposed).

MOTION: Mr. Morales **MOVED** to grant a waiver from Subdivision Regulations Section VII.L as requested for EKP case 09-01 with the conditions identified as items 1-6 under Plan Review in the Town Engineer's letter dated 14 February 2009. Chairman Sullivan seconded.

DISCUSSION: Mr. Warren noted that the provision for roads is not applicable as this proposal has only a driveway.

With no further discussion, Chairman Sullivan called the vote. The motion carried 4-0.

The Board then requested Mr. Quintal to address items 1-6 as outlined in the Town Engineer's letter dated 14 February 2009.

Mr. Quintal assured the Board that all items would be addressed.

1. The plan details for rip-rap check dams and silt fencing will be added to the plan.
2. Fabric details for the subsurface interceptor will be added to the plan.
3. Swale design along the uphill side of the drive will be added to the plan.
4. Driveway profile to be added to the plan.
5. Paving area to be more clearly identified on the plan.
6. Written DOT acceptance and driveway permit to be obtained.

The Board then reviewed their options in moving forward with the application. Those options included continuing the public hearing until March (which would allow the applicant to get the plans updated), approving the application, approving the application with conditions, or denying the application. Board consensus was to grant conditional approval.

MOTION: Mr. Warren **MOVED** to approve the 2-lot subdivision plan for Julie Turner, 87 Haverhill Road, MBL # 10-04-04, EKP case 09-01 with the following conditions:

1. The construction of the house, well and septic be held to the general location as depicted on plan set G1 (drainage plan);
2. Items 1-6 under Plan Review of Civil Consultants Letter dated 14 February 2009 re: Julie Turner Subdivision be addressed and approved by Town Engineer and Board Chairman.
3. Note reference of maintenance plan schedule for retention pond, culvert and drainage areas on the recorded plan. This will also include the maintenance of the engineered slope located above the house.
4. All fees paid, certificate of monumentation and appropriate number of plan copies submitted.

Mr. Morales seconded. With no further discussion, the motion carried 4-0.

OTHER BUSINESS

At this time, Chairman Sullivan recognized Mr. Gary Hinz and Mr. Dan Guilmette and welcomed them to open discussion with the Board.

Mr. Guilmette indicated his concerns relative to a citizen's petition to extend the town center/commercial district along Main Street all the way to Carmen's corner.

Mr. Hinz stated he was interested in hearing about the Plan NH application being submitted by the Board.

A discussion ensued outlining the citizen's petition process, as well as the intent behind this particular petition. A Main Street resident was recently denied a home occupation and a variance to operate an automotive repair shop and took steps to rezone the street in which he resides. The citizen's petition procedure is outlined in RSA 675:4. It was noted that the Planning Board failed to hold a public hearing on the petition as required and the repercussions of that are currently being investigated by Town Counsel. At deliberative session the petition was amended from town center to commercial.

The Plan NH application is to obtain design assistance in brainstorming the best zoning options for East Kingston. There are no committed plans to change zoning, only to look at options that might assist the town's tax base, reduce the town's carbon footprint, and provide options for people to work closer to home. All options, if developed, will be presented to the residents for public input prior to presenting a final product to the town for vote.

Mr. Guilmette thanked the Board for its welcoming discussion and stated this was in contrast to his previous experiences with the former Chairman.

BUILDING INSPECTOR'S REPORT

Building Inspector Donald provided the Board with the following update as a means to keep them informed of his recent activities and possible upcoming cases.

1. Clint Furnald is requesting to move a mobile home off of Stage Coach Road.
2. Inspector Donald has signed off on the monumentation for the Freeman/Gas Line lot line adjustment.
3. 108 Depot Road is requesting a driveway permit for access to the property from George Street. The property owner was recently denied a home occupation permit for a dog kennel.
4. January 21st both Inspector Donald and Fire Chief Richard received a complaint for fire and building code violations at 89 Main Street – the residence at Carmen's Restaurant. Numerous violations were cited.

The property owner may request demolition and reconstruction plans. Board members may wish to review the list of conditions when the restaurant was approved before considering any changes to the property. At a minimum a new septic system would need to be installed.

PLAN NH APPLICATION

Board members reviewed the application for design assistance and agreed to move forward with it.

MOTION: Mr. Warren **MOVED** to move forward with Plan NH by mailing out the completed application immediately. Mr. Morales seconded. With no further discussion, the motion carried 4-0.

PROJECT APPLICATIONS

The Board reviewed applications relative to the State's Ten Year Transportation Improvement Plan and the Rockingham Economic Development Corporation. It was noted that the intersection of Willow Road and Route 107 was listed as a regional priority under the Long Range Projects but not funded in the State's 10 Year Plan. No action was suggested or taken on these two items.

The Community Technical Assistance Program was placed on the March agenda. Planner LaBranche will provide more information at that time.

TOWN HALL AVAILABILITY

It was noted that the Town Hall would be available for Board meetings in April. It was the consensus of the Board to continue holding their monthly meetings at Pound School, as the acoustics are very poor at the Town Hall. The Board will submit a formal request to the Selectmen to remain at Pound School.

With no other business before the Board,

MOTION: Mr. Warren **MOVED** to adjourn. Mr. Morales seconded. With no further discussion, the motion carried 4-0 and this February 19, 2009 Planning Board meeting ended at 9:30 PM.

Respectfully submitted,

Catherine Belcher

Recording Secretary, Pro Tem

David Sullivan, Chairman

Minutes completed and on file February 23, 2009.

Minutes approved _____.