

TOWN OF EAST KINGSTON PLANNING BOARD

MEETING MINUTES

May 18, 2023

Pound School
41 Depot Road
East Kingston, New Hampshire

Josh Bath, Chair
Tim Allen, Vice Chair
7:00PM

AGENDA

Carter Family Irrevocable Trust – 68 South Road – 2-Lot Subdivision
Alexa Commerci – 10 Squire Way – Invisible Home Occupation
George Whitman JR - 18 Rowell Road – Invisible Home Occupation

Board Members Present: Josh Bath - Chair, Tim Allen – Vice Chair, and Janet Smith. Absent: Bob Nigrello – Ex-Officio and Ellie Cornoni.

Others Present: Dennis Quintal (Town Engineer), Julie LaBranche (Planning Consultant), Donna Carter, Layne Carter, George Whiteman, Jill Whiteman

Chairman Bath opened the meeting at 7:01pm followed by the roll call.

CARTER FAMILY IRREVOCABLE TRUST – 68 SOUTH ROAD – 2-LOT SUBDIVISION – MBL# 13-02-01 – PUBLIC HEARING

Chairman Bath then opened the public hearing of the Carter Family Irrevocable Trust 2-Lot Subdivision Proposal (Case # 2023-06) to subdivide a 51.69-acre parcel located at 68 South Road, MBL# 13-02-01, into two parcels with the newly created parcel measuring 2.88 acres and reducing the parent parcel to 48.81 acres.

Noting only three board members present, he asked the applicants if they would like to move forward with less than a full board or continue the hearing to another night. The applicants elected to move forward with the three present board members.

Donna Carter (member of the Carter Trust) presented for the Carter Family Trust explaining the parent parcel of land has an existing house that they would like to parcel off as a stand-alone lot. The trust will retain the remainder of the parent parcel lot. She explained that the wetlands have been mapped, test pits are done and have been added to the plan, driveways have been delineated, and as far as she can tell, everything looks to be straight forward and in order on the engineering plan created by Paul Nichols, PE of Bar Harbor, ME.

Mr. Dennis Quintal PE (East Kingston Town Engineer) reviewed a letter he submitted to the Planning Board dated May 15, 2023, surrounding his review of the engineering plan “Carter Family Revocable Trust, Subdivision of Land” dated March 12, 2023. He noted that a new revision of the Carter Subdivision has been received by the Planning Board dated May 18, 2023, since his review. The latest plan addresses all his noted concerns with the plan. Mr. Quintal then proceeded to review items 1-11 from his letter, explaining how they were addressed by the latest revision of the subdivision plan (see Civil Construction Management, RE: Carter Family Revocable Trust, Engineering Review, dated May 15, 2023, for details of the items of concern noted by Mr. Quintal). He reiterated that the final plan would need to have the Wetland Engineer Stamp on Sheet 2. Per the notes on the plan, sheet 2 will be recorded and sheet 1 will be filed with the town office.

Ms. LaBranche stated that she and Mr. Quintal had been in contact with the applicant and engineer over the past week as the plan changes were being made. All the plan changes that Mr. Quintal requested and highlighted in his review letter have been addressed. She stated that items #1 and # 2 of her letter, “Subdivision Application - Carter Family Irrevocable Trust, South Road, Tax Map 13-2-1”, dated May 15, 2023 had been addressed with the latest plan revision. She reiterated that item #3, driveway permit, would need to be addressed prior to the issuance of a building permit

and commented that on the revised plan there are two driveways shown, one south and one north. There was some discussion surrounding which one was active.

Mr. Layne Carter (68 South Road) clarified that the driveway in use was the one closest to the barn and that the other was primarily just a cow or hay wagon path.

Mr. Quintal stated he was glad to see them delineated and both appear to have good sight-line distances.

Chairman Bath asked if the board had any additional questions.

Vice Chair Allen asked for clarification as to the location of the 4K septic reserve area. Mr. Quintal showed him where it was delineated on the plan. Vice Chair Allen went on to highlight what he had reviewed from the plan, the subdivision plan shows that there is plenty of space for the well protection radii, the septic reserve areas are shown, no wetland encroachment and good delineation, the “old farm road” that will now cross from Lot 2-1, through Lot 2-2, and back to Lot 2-1 will not be provided with an easement and will be gated, essentially terminating the road and it’s use unless the new owner of lot 2-2 allows passage over the pathway. Both lots have plenty of frontage and good sightline for driveways. He Allen stated that he didn’t have any other questions.

Ms. LaBranche said she still had questions about the note stating that “farm road” would be terminated and gated and who would enforce this note and ensure it happens. She felt this note left too much ambiguity about the future of the road and who would enforce the note.

Vice Chair Allen opined that without the granting of an easement for that farm road/pathway, as soon as the property changes hands, the pathway will be unusable and essentially trespassing. It would be left to a civil matter if someone was to try and utilize the path with the permission of the owner of Lot 2-2.

Ms. LaBranche said that the note seemed “clunky” and not the cleanest way to deal with this.

Mr. Quintal, Chairman Bath, and Mrs. Smith all felt the plan note and gate system is adequate for protecting the property owners and clear enough that the road use should be terminated unless allowed by future owners.

Further discussion ensued surrounding the “old farm road” for clarity.

Vice Chair Allen asked the applicants directly if they were ok with the fact, as stated on the plan, that as soon as this plan is approved, they will no-longer have access to use the “old farm road.” Are they ok with that, and is that what was intended? The applicants stated that they were indeed ok with that outcome.

Chairman Bath opened the hearing to public comment. There being none, he closed the public comment portion.

The hearing was closed, and deliberations began. There was discussion regarding the motion to approve and the conditions to include with the motion.

MOTION: Chairman Bath motioned to approve the Carter Family Irrevocable Trust 2-Lot Subdivision Proposal (Case # 2023-06), to subdivide a 51.69-acre parcel located at 68 South Road, MBL# 13-02-01, into two parcels with the newly created parcel measuring 2.88 acres, thereby reducing the parent parcel to 48.81 acres with the following contingencies: 1) wetland soil scientist stamp will be shown on Sheet 1 or 2; 2) application fees, engineering and planner review fees, recording fees, and monumentation fees must all be paid in full; 3) a certification of monumentation will be submitted to the town; and 4) monumentation will be witnessed by a town official. The motion was seconded by Janet Smith and the motion was approved by unanimous vote of 3-0-0.

With no further discussion Chairman Bath closed the hearing.

ALEXA COMERCI – 10 SQUIRE WAY – MBL# 01-01-26 – INVISIBLE HOME OCCUPATION (Case 2023-04)

Chairman Bath opened the Invisible Home Occupation proposal for Alexa Comerchi (Case# 2023-04) to operate an online retail business (The Quinn and Company) from her home at 10 Squire Way, MBL # 01-01-26; however, neither Ms. Comerchi nor a representative were present.

MOTION: Chairman Bath motioned to continue the case to the June 15, 2023 meeting; seconded by Mrs. Smith. The motion passed unanimously (3-0-0).

The case was closed and no further discussion ensued.

GEORGE WHITMAN JR - 18 ROWELL ROAD – MBL# 10-17-02 – INVISIBLE HOME OCCUPATION (Case 2023-05)

Chairman Bath opened the Invisible Home Occupation (Case# 2023-05) for Mr. Whiteman who proposes to operate a product transportation company, business office only, (G&J Transportation, LLC) from his home at 18 Rowell Road.

Mr. Whitman introduced himself and presented his application. He started by describing that they had recently filed another Invisible Home Occupation application for the Whitman Wood Processing Company which will absorb G&J Transportation at some point over the next year or so. The two companies will combine. They wanted to get the application in the works. Some discussion ensued about the date of the second application's submission, and it was determined that the application was received too late to have made the cutoff for this meeting and would be scheduled for the June meeting.

Vice Chair Allen explained that the board had publicly noticed the G&J Invisible Home Occupation application and legally would be unable to discuss or make any decisions surrounding the Whiteman Wood Processing Company, thus, for this evening the board will stick to the application at hand surrounding G&J Transportation.

Chairman Bath asked Mr. Whitman to walk the board through his application and what he proposes to do with this Invisible Home Occupation. Mr. Whitman described that they have been operating this business from this location for 11 years and just recently realized that the town has a requirement to register businesses when the town hall refused to register his company's tractor trailer. He stated they had no idea this was a requirement. He has one tractor trailer that is used for hauling materials. He keeps the truck and trailer at home in a 40'x70' structure on his property. He hauls aggregate type products. His other business takes logs and waste products and processes them to create products like mulch, chips, wood ash, pellets, etc. These products are then hauled by G&J Transportation and the tractor trailer that operates from the 18 Rowel Road property.

Chairman Bath clarified that Mr. Whiteman had applied for an "Invisible" Home Occupation, and as such, per the East Kingston Zoning Ordinance there should be no visible presence of a business operating from the property, no customers coming and going, etc. He asked for clarification from Mr. Whitman about the fact that he applied for a "home office Invisible" type home occupation but has stated that he plans to keep the tractor trailer on property and use 18 Rowel Road as the base of operations for the truck and business.

Mr. Whitman reiterated that he would indeed like to continue operating the truck from the property. He feels that because he has been doing it for 11 years the recent addition to the town ordinance restricting residential properties to one commercial vehicle of 14,000 GVW or less should not apply to him. The town has been registering his truck for 11 years. He stated he keeps the truck inside the building at night. He has never had any problems with neighbors. He stated before moving to East Kingston he called the town hall to ask about this and then talked with the road agent. He states he was told that "as long as there aren't problems with the neighbors, having a single truck on property was not a problem."

Chairman Bath thanked Mr. Whitman for the history but explained that the board does not make decisions regarding Home Occupations based on historical actions. The board will evaluate the current application based on current ordinances and what is being asked for now and not what has been done in the past. He stated that the town currently has a number of ordinance requirements that this application does not meet, one of which is the 14,000 GVW

limitation, which a tractor trailer truck certainly doesn't meet. He asked if there was another location to store the truck off-property.

Mr. Whiteman said that he built the barn to store the truck. He doesn't want to keep in anywhere else. He wants to store the truck at 18 Rowel Road so he can perform maintenance there, keep the snow off in the winter, and keep the truck safe.

Some discussion ensued about the description and characteristics of the truck and trailer.

Ms. LaBranche asked if there was any desire to expand operation on the property. Mr. Whitman explained he was downsizing and combining the two businesses and intends to have everything central to one location.

Chairman Bath opened the public comment session. There were no members of the public present, so the public comment session was closed.

Chairman Bath explained that through town vote there are ordinances that control what can happen in the residential district. The town residents have made it clear, through the ordinances adopted, that they want to preserve the residential character. He explained the most recent addition to the ordinances was the addition of the 14,000 GVWR limitation within the residential district (Article III-B) and the fact that it may or may not be shielded from sight is not relevant.

Vice Chair Allen provided a bit more clarification, stating that the issue here isn't just the weight limitation ordinance that Mr. Whiteman referenced, but others as well. Even if the town hadn't recently adopted the weight limitation ordinance, this business most likely would not have been approved any time after 1989 either as a visible or invisible, as it conflicts with numerous ordinances. He went on to explain that in 1989 the town adopted the Home Occupation Ordinance to control what businesses could operate from the residential district in town. Basically, this ordinance states, any business in town after 1989 would need to apply for a permit. The ordinance also specifically states the restrictions and types of businesses allowed. Examples include accountants, beauty parlors, pet care, hobby shops, dentist office, tailor, artists, fitness training and a variety of similar other business types. Specifically prohibited within the ordinance are industrial and commercial activities (trucking, hauling, etc.), the regular need for the coming and going of delivery trucks over 12,000 GVWR, and most recently the restriction of not more than one commercial vehicle of 14,000 GVWR or less on the property, as well as items like noise, dust, etc. Even if Mr. Whiteman had applied for a permit the very day he moved to town, this business would not have met the requirements of the ordinance because of the business type and equipment.

Vice Chair Allen further stated that this situation is unfortunate, as no member of the board enjoys these types of situations. However, the board can only make decisions based on the rules and the ordinance guidelines and it sounds like the information Mr. Whiteman was given when he moved to town and/or the person he talked with didn't know the rules or gave bad information. Mr. Whiteman's moved to town 20+ years after the town had adopted an ordinance stating that he needed a permit to operate a business from his property.

Mr. and Mrs. Whitman reiterated they talked with the town hall and they did everything they thought they had to do. They stated they feel they were in compliance with earlier versions of the ordinance, and they shouldn't be penalized for being given bad information stating they could park a commercial vehicle on their property. They don't understand why all of a sudden, the town is not willing to register the truck after all these years.

Chairman Bath reiterated that that the board can't just make up the rules as they go. The board must follow the ordinance guidelines.

Mr. Whiteman asked why the board can't just waive the rules?

Chairman Bath stated that the board must follow the rules and ordinance and if the Planning Board does not recommend approval to the Selectboard, he (Mr. Whiteman) has the option to go to the Zoning Board of Adjustment

(ZBA). He further stated that if the truck can be kept off-site at another location this case would be easier to approve as an invisible home occupation and would meet the requirements of the ordinance, at which point the board would be happy to provide a recommendation of approval.

Mr. Whitman stated that the truck is currently being kept elsewhere and has been since the beginning of the current registration cycle, but that is not what he wants long-term or in the winter, as this will cause a safety concern with ice and snow on the truck.

Vice Chair Allen further explained the process and options available. He remarked again that the board does not enjoy these scenarios or the fact that they can't always grant approvals, but the board must follow the rules. Regarding waiving ordinances, the Planning Board does not have the authority to waive the ordinance, nor does the ZBA. However, the ZBA has the ability to provide relief from the ordinance by means of a variance if certain criteria are met. If there is something about this particular property or situation that is different from everyone else and it is justified, the ZBA has the ability to provide relief from an ordinance. The ordinance is not something the ZBA can just disregard when they feel like it; a set of specific criteria need to be met to justify the relief. Not knowing about the rules or being misinformed are not legal reasons to justify relief and that specific variance criteria must be met. In this current scenario, the Planning Board is currently tasked with looking at what the applicants have asked for, evaluating whether the ordinance allows that activity, and then making a recommendation to the Board of Selectmen based on those rules. In this situation, the fact that this has been on-going for 11 years is not relevant for the Planning Board's decision. Even if the applicants had applied for this Home Occupation as soon as they moved to town 11 years ago, he (Allen) does not believe it could have been approved based on the ordinance enacted in 1989. If the applicants were willing to just go with an office and bookkeeping of the business on the property, this Invisible Home Occupation application would meet the ordinance requirements. But if the Whiteman's want to keep a big heavy truck there and come and go treating the property as a business home base, the ordinance says no. The Board of Selectmen are the final decision-makers with regard to home occupations and they can elect to follow the Planning Board's recommendation or go another direction. So, if the Planning Board is unable to recommend approval of the Invisible Home Occupation, and the Board of Selectmen deny the Invisible Home Occupation permit, the next course of action would be to apply for a Visible Home Occupation. If that application is denied, they could then go to the ZBA for a variance, then Housing Board of Appeals, and then court. That is the high level of the options available to moving forward and the process flow.

Ms. LaBranche asked the weight of the truck component to which Mr. Whiteman stated it was 19,000 lbs. He further commented that the ordinance states that all agricultural equipment is exempt from the weight restrictions of commercial vehicles. He stated that his trailer is considered agricultural and should be exempt. He then further reiterated that he believes because the "truck" portion of his tractor trailer setup is called a "tractor" per state guidelines and not a truck, and the fact that he hauls an agricultural trailer for wood chips and soils, that he is exempt.

Ms. LaBranche stated that the issue here is that Mr. Whiteman is still operating a commercial hauling business. He's not hauling hay or some other product that he produced on a farm. He hauls materials associated with a commercial business processed elsewhere. That's not the intent of the agricultural exemption.

Mr. Whiteman stated he does not see where the definition of agricultural is spelled out. He is hauling an agricultural trailer and feels he should be exempt. His second company is an agricultural company where he processes materials and this truck hauls those materials.

Chairman Bath reiterated that these types of extenuating circumstances are items that should be highlighted to the Selectboard when they decide on this Invisible Home Occupation. He then asked if there were any additional questions. There were none.

Chairman Bath motioned to NOT RECOMMEND APPROVAL of the Invisible Home Occupation for the following reasons:

1. The GVWR of the commercial tractor trailer is above what is allowed in the residential district, Article III-B.1
2. The commercial operation of the trucking company is not allowed, per Article III-B.2
3. The coming and going of a commercial vehicle from the property does not meet the requirements of Article XVI.A for Invisible Home Occupations and will display activity outside the home.
4. The coming and going of a commercial vehicle and the operation of a commercial operation does not meet the requirements of Article XVI.G, where an Invisible Home Occupation shall not have an impact on traffic, visual, or any other impacts on the neighborhood.
5. The business does not meet the requirements of a Visible Home Occupation, nor an Invisible Home Occupation, the business conflicts with Article XVI.C Standards, E. Permitted uses, and the commercial operation is specifically listed in paragraph F. as "Uses not Permitted."

The motion was seconded by Mrs. Smith.

Discussion:

Mr. and Mrs. Whiteman asked a final question that if they were to decide to keep the truck elsewhere and simply do administrative functions from the property, would the Invisible Home Occupation be approved? Chairman Bath and Vice Chair Allen both explained that if the truck was kept elsewhere, that if it wasn't being maintained on the property, and that wasn't coming and going from the property, then the business would meet the requirements for an Invisible Home Occupation.

VOTE: The motion passed unanimously (3-0-0).

Mr. Bath thanked the applicants for coming and explained that this recommendation will be forwarded to the Selectboard for their consideration. The Planning Board will also be sending out a Notice of Decision. The Board of Selectmen will place this item on their agenda, and he recommends that the Whiteman's attend that meeting to have their voices heard.

APPROVAL OF MINUTES

Board members reviewed the minutes from April 20, 2023 meeting.

MOTION: Mrs. Smith made a motion to approve the draft minutes as published; seconded by Mr. Bath. The motion passed unanimously (3-0-0).

HOUSING NEEDS ASSESSMENT UPDATE

Ms. LaBranche updated the board regarding the Housing Needs Assessment Survey. The board has received 27 responses to date. Ms. LaBranche intends to remind all the town boards to push the survey link out to as many people as they can to get the number of responses up. She's hoping to have a summary of responses by June.

She went on to say she would like to pursue Phase III of the Invest NH Grant Program to see if the funds could be used for Master Planning purposes. She also believes that the board needs to update the Growth Management Ordinance as well as investigate and possibly update the Impact Fee Ordinance section. She feels the Growth Management Ordinance is in desperate need of an update.

ADJOURNMENT

MOTION: Mrs. Smith motioned to adjourn; seconded by Mr. Allen. The motion passed unanimously.

Respectfully submitted,

Tim Allen, Planning Board Vice Chair

Minutes approved on June 15, 2023.