

TOWN OF EAST KINGSTON PLANNING BOARD

MEETING MINUTES

December 21, 2023

East Kingston Elementary School
5 Andrews Lane
East Kingston, New Hampshire

Josh Bath, Chair
Tim Allen, Vice Chair
6:30PM

AGENDA

Proposed Zoning Amendments – Public Hearing
Midnight Leasing LLC Site Plan Review (Case# 2023-11) – Public Hearing
Pappalardo Family Trust Subdivision (Case# 2023-13) – Design Review

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

Others Present: Victoria Healey – RPC Planner, Dennis Quintal – Town Engineer and Conservation Commission Chair, Barry Gier, PE Jones and Beach, Michael Jacques, Dan Bodwell, Adam Barrs, Nick Coppola, and other members of the public who did not actively participate in the meeting.

Chairman Bath opened the meeting at 6:41pm followed by the roll call.

PUBLIC HEARING ON PROPOSED ZONING AMENDMENTS

Chairman Bath opened the public hearing at 6:41pm on proposed zoning amendments and stated that, once finalized, will be submitted to the Selectmen's Office for placement on the 2024 Town Warrant.

Article VIII – Permitted Uses F. Accessory Dwelling Units

Chairman Bath announced the intent of the proposed changes to Article VIII is to increase affordable housing opportunities without the need for more infrastructure or further land development, provide flexible housing options for residents, integrate affordable housing with minimal negative impact, and provide elderly citizens the opportunity to retain their homes and age in place. The town already allows for attached accessory dwelling units; this amendment will allow for detached units. This amendment will also increase the living space for an accessory dwelling unit from 900 square feet to 1,200 square feet. He then presented the language changes in detail (provisions regarding appearance, approved by way of special exception, one per parcel, entrance location and setbacks and increase in square footage from 900 to 1,200).

With no comments or questions from the board, he opened the hearing to public comment.

Michael Jacques of 2 Tilton Lane questioned the rationale behind the increase in square footage noting the Town of Brentwood allows for units up to 1,500 square feet of living space. He stated they could increase the tax base by increasing the living space to 1,500 square feet as these properties would increase in value, thus increasing the tax base.

RPC Planner responded by noting the affordability of a 1,200 square foot unit verses a 1,500 square foot unit, as well as 1,200 square feet being the average size of a two-bedroom apartment.

Vice Chairman Allen added that in addition to the affordability aspect, the board did not want the size of an accessory dwelling unit to compete with or exceed the size of the primary dwelling thus giving the appearance of a two-family dwelling. The increase from 900 square feet (existing provision) to 1,200 square feet represents a 30% increase. He stated 1,200 square feet is more than adequate for a two-bedroom unit.

Mr. Jacques stated he was looking at the thought pattern behind the square footage change, noting again the potential to increase the tax base in town.

Chairman Bath stated there are a number of ways to address affordable housing; however, East Kingston is limited to what it can offer due to its lack of municipal water and sewer. Without these town services, it is very expensive to a homeowner or developer to build homes that would qualify as affordable housing.

There being no other comment from the public or board,

MOTION: Chairman Bath motioned to move the proposed zoning amendments to Article VIII Permitted Uses - F. Accessory Dwelling Units to town warrant; seconded by Vice Chair Allen. The motion passed 3-0-0.

Article XVI – Home Occupations

Chairman Bath announced the intent of the proposed changes to Article XVI is to:

- Provide a more comprehensive purpose statement inclusive of computer and telecommunications businesses that are increasing within society.
- Allow a home occupation to be operated out of an accessory dwelling unit.
- Provide for invisible home occupation standards as the current ordinance does not.
- Require all home occupations, whether visible or invisible, undergo the same permitting process for equality purposes. The annual permitting process shall remain the same (\$50 per year for visible and \$25 per year for invisible).
- Clarify that the parking of commercial vehicles over 14k pounds is not permitted as it states also in Article III.
- Require copies of other required state/federal licenses and approvals be provided by the applicant and updated on an annual basis. This ensures the appropriate agencies are monitoring the business annually and provides a second layer of code enforcement.
- Modify permitted uses by reducing the number of children permitted for in-home daycares as a means to more align the minimal impact requirements expected of other permitted uses (noise, traffic), expanding uses similar to other permitted uses (aestheticians, massage therapists, stylists) but limiting them to a maximum of one chair (thus keeping with the home occupation nature and, in the cases of beauticians, aestheticians, barbers and stylists, minimize the quantity of chemicals and products that could enter water sources through private septic systems), removes vehicle repair and autobody as these uses raise the risk of increasing water pollution, and clarifying that uses which involve the parking and storage of tractor trailer trucks and other vehicles in excess of 14k pounds is not permitted. These permitted uses solely address businesses located within the residential zone for which the voters have clearly expressed shall be a rural/agricultural setting. The town has created areas which may be used for other businesses that are commercial and light industrial in nature.

Vice Chairman Allen presented the language changes in detail (purpose statement, allowed in ADUs, commercial vehicle clarification, invisible home occupation standards, application process, state licensing/permits, changes to permitted uses, and changes to uses not permitted.)

Chairman Bath opened the hearing to public comment.

Ex-Officio Nigrello left the board table to pose questions as a resident and not a board member. He stated he approves of most of the changes proposed to the article; however, he feels there is still some confusion about what constitutes a home occupation or an invisible home occupation. He asked if a person working remotely from home for an employer is required to get a permit, or if someone who has an LLC and works as a 1099 employee who does the same line of work as the person working remotely needs a permit. The language does not clearly define what distinguishes between

them. There are no other criteria – no 1099 or W-2 references. Even if there was a distinction between a 1099 and W-2 employee, the issue is that both do the same work. Why would one need a permit and the other does not?

Nick Coppola of 51 Willow Road stated he falls under this category. He worked as a W-2 employee, got laid off, and the company hired him back as a 1099 employee. He does not feel it is right for him to have to obtain a permit and pay an annual \$50 fee.

Discussion ensued on determining the threshold for what constitutes an invisible home occupation. Working remotely from home for a business not located at the premises does not fall under the home occupation ordinance provisions; however, businesses that are required to register with the NH Secretary of State would be. Although this specific language was not added to the ordinance, it was discussed by the board when it drafted the amendments and was part of the rationale for the changes. The board discussed the process for adding the language now which would require a second public hearing to which they opted to not make the changes to the proposed amendments this year, but next year.

Mr. Nigrello stated the clarification is helpful, but it still does not address situations where someone working remotely and someone with a registered business with the state are doing the same exact work and only one of them is required to obtain a permit. He stated this issue has come to light because of the uptick in remote work due to covid. He'd like the board to spend more time on this article to draft rules that make sense for both the W-2 and 1099 person.

Vice Chairman Allen state the reason for the changes was to clear up the provisions and provide a process for invisible home occupations as standards were written for a visible home occupation but nothing for invisible. He stated since 1984 there have been provisions about operating a business in town. If the town doesn't want to know about businesses under a certain threshold, then the board could draft that.

Mr. Nigrello stated the term "home occupation" is confusing as one is engaged in an occupation whether they are a 1099 or W-2.

It was noted that the term "home occupation" is a term used by the state and refers to a business operation. It does not apply to someone who works from home; but someone who is operating a business from the home.

MOTION: Chairman Bath motioned to move the zoning amendments to Article XVI Home Occupations to town warrant; seconded by Vice Chair Allen.

Discussion: Vice Chairman Allen stated he agreed with the issues raised by Mr. Nigrello, but for the purposes of moving the article along, he seconds the motion. The board reviewed the process for making changes now (finalize new language tonight, post for second public hearing, hold second public hearing, and move to warrant) but opted to move forward with accepting the changes as proposed and clarifying further for the 2025 warrant. The board noted that the concerns raised by Mr. Nigrello exist under the current ordinance language and that the proposed language addresses other areas that needed clarification.

VOTE: The motion passed 3-0-0.

Article X Floodplain Development

Chairman Bath explained that whenever new maps are produced by FEMA, the agency requires that communities who are members of the National Flood Insurance Program (NFIP) have ordinances that are fully compliant with the NFIP regulations. These amendments will bring the town's floodplain ordinance into compliance. He then presented the language changes in detail (terminology, definitions, and zone delineations).

He then opened the floor to public comment.

Dan Bodwell of 79 North Road inquired on the definition of a flood, the implications of the changes for dealing with beaver dams, and the consequences for the town not updating the ordinance.

Conservation Commission Chair Dennis Quintal responded that the flood insurance rate maps referenced in the article are basically to address rivers and streams that have certain elevations. Beaver dams can be removed; however, if they remain for an extended period of time, their existence may change the elevation of a river or stream which could then make its way onto a flood map. The ordinance has nothing to do with beaver dams, it relates to flood rate insurance.

Vice Chair Allen stated the language changes came from the state to update how flood insurance is applied to properties. The board is proposing language changes to align with the state's language as the town's ordinance is out of compliance with the state. The language changes will not affect a beaver dam in one of Mr. Bodwell's fields – the current language in the ordinance is old state guidance, and the proposed language will align with the state's new language. He added that none of the board members are experts in the field of floods, flood mapping, or flood insurance.

Adam Barrs of 14 Tilton Lane asked about the consequences of not following this ordinance (specifically as it relates to the definition of violation – paragraph 29) and who would enforce it.

Vice Chairman Allen stated the enforcement of this ordinance is outside the board's purview.

Conservation Commission Chair Quintal stated the ordinance points towards flood insurance and flood insurance rates. If a property is abutting a river or stream, and if the dwelling is close to the stream or river, any financial company that is going to issue a mortgage on that property would require flood insurance. In cases where the dwelling (located close to a river or stream) is well above the flood elevation, the property owner would need to get flood certification to verify the structure is above the flood levels. These proposed changes just clarify this. To that end, the government is asking towns to update their ordinances.

With no further questions from the public,

MOTION: Chairman Bath motioned to move the proposed zoning amendments to Article X Floodplain Development to town warrant; seconded by Vice Chair Allen. The motion passed 3-0-0.

Article XVII – Building Inspector and Permits

Vice Chair Allen noted the proposed changes are at the request of the Building Inspector and then presented the language changes in detail (process changes, definition, and code reference updates).

The intent of the changes reflects current practice and includes building code guidelines and references.

Vice Chair Allen stated he does not personally support the terms “alter” and “repair” as they relate to when a building permit is required. The terms are too broad and restrictive. He would support adding the terms “substantially” or “structurally” to them. He opposes language that is overly burdensome to the residents.

Discussion ensued on the actual language coming directly from the building code and that applications shall be reviewed by the Building Inspector for determination as to whether the project requires a building permit. The new language references the International Code Council Guidelines and the International Building Code which articulate which projects require a building permit – the threshold of what requires a building permit and what does not is further defined within the context of the Code itself. The lists were too extensive to include as part of the article. The board agreed that this article could use more clarification as part of next year's proposed amendments review.

Chairman Bath opened the floor to public comment. There was none.

MOTION: Chairman Bath motioned to move the proposed zoning amendments to Article XVII Building Inspector and Permits to town warrant; seconded by Mr. Nigrello. The motion passed 2-1-0 (Vice Chair Allen opposed).

Building Code

Chairman Bath presented, in detail, proposed amendments to the Building Code Ordinance that included changes and updates to code references and the fee schedule.

He then opened the floor to public comment. There was none.

MOTION: Chairman Bath motioned to move the proposed zoning amendments to the Building Code Ordinance to town warrant; seconded by Vice Chair Allen. The motion passed 3-0-0.

Chairman Bath then closed the public hearing for proposed zoning amendments at 7:49pm.

MIDNIGHT LEASING LLC SITE PLAN REVIEW PROPOSAL – MBL# 11-02-11 (Case # 2023-11)

Chairman Bath opened the public hearing for Midnight Leasing LLC at 7:50pm and presented a letter from Professional Engineer Christian Smith requesting the board continue the public hearing to February 15, 2024 so that the applicants could facilitate the requested boundary survey and to provide a complete and final response to outstanding board and engineering review issues.

MOTION: Chairman Bath motioned to continue the public hearing for Midnight Leasing LLC's site plan review proposal for property located at 9 Bowley Road, MBL# 11-02-11, to February 21, 2024 at 7pm as requested by the applicants; seconded by Vice Chair Allen. The motion passed 3-0-0.

Chairman Bath closed the public hearing at 7:51pm.

PAPPALARDO FAMILY REALTY TRUST (Case #2023-13) – DESIGN REVIEW

Chairman Bath stated that RSA 674:4 II (b) and (c) state in part that the board may engage in nonbinding discussions with an applicant beyond conceptual and general discussions which involve more specific design and engineering details; provided, however, that the design review may proceed only after notification to abutters and the general public. This preliminary review shall be separate and apart from formal consideration. The applicant will need to re-apply for formal consideration once the design review phase has ended and abutters and the general public will be notified of this formal consideration in accordance with public hearing notification procedures.

He then opened the design review session with Pappalardo Family Trust noting the applicant proposes to create 12 conservation subdivision lots on properties located at 14 Tilton Lane (MBL# 14-3-12) consisting of 16.92 acres and at 2 North Road (MBL# 14-3-7-1) consisting of 25.56 acres with a total combined area of 42.48 acres. The applicant will present two options for discussion.

Presenting for the applicant, Professional Engineer Barry Gier, from Jones and Beach Engineers Inc., stated they are seeking the input from the board regarding a proposal located in the residential zone in which the applicants went before the board back in 2021 for a 17-lot proposal with access onto Route 107. This 17-lot proposal was denied due to safety concerns about this access point (Route 107). The board had also stated they felt there were too many lots being proposed on those properties. The applicants are back before the board now to present two conceptual conservation subdivision designs for board feedback that reduce the number of lots from 17 to 12.

The first conceptual plan (CP13) extends the Tilton Lane cul-de-sac to accommodate 12 new lots and provides an emergency-gated access onto Route 107. There is no wetlands impact to this design; however, they would need relief from the cul-de-sac length provisions of 1,000 feet.

The second conceptual plan (CP14) also accommodates 12 new lots and loops Tilton Lane back to Route 108. This design creates a wetlands impact of 10,200 square feet and would require a special exception from the ZBA as well as a permit from NH DES. He stated CP13 provides for a better layout with no wetlands impact.

Chairman Bath noted both concepts provide a 100-foot buffer and reduce the number of lots from the previous plan. With respect to CP13, he stated he is still concerned about roadway access onto Route 107, whether restricted to emergency vehicles only or not. The access was not deemed suitable safety-wise for any traffic. This concept would

also require a waiver from the cul-de-sac provisions. With respect to CP14, the proposal would create a wetlands crossing which would require the granting of a special exception from the ZBA in order to loop Tilton Lane back to Route 108. It was confirmed that the 200-foot setback to the newly proposed lots from the newly created entrances had been met in both conceptual drawings.

Conservation Commission Chair/Town Engineer Quintal spoke to the wetlands impact, which is under the jurisdiction of the state, to which the Conservation Commission would be allowed to provide comment as part of the wetland's application process. He then spoke to concerns about the road access onto Route 107 noting the road agent had concerns about the plowing of that section of roadway as plowing and sanding would still be required even though it would not be accessible to the public. He then referenced Article XI Conservation Subdivision Development Section E. Maximum Allowable Density, with respect to a yield plan which will be required as part of the official application.

Vice Chair Allen added the yield plan to determine the number of lots allowed will need to be calculated without the need for waivers and special exceptions or variances. At his further inquiry, Mr. Gier stated the actual length of the cul-de-sac in CP13 is 2,000 feet, a cistern will be constructed to address fire suppression requirements, and both the 50% and 25% requirements for conserved open space would be met.

Vice Chair Allen further stated CP13 brings them back to the same issues as the previously denied proposal with respect to traffic safety on Route 107 and CP14 removes the Route 107 concerns but impacts the wetlands. He inquired if the proposal would include the relocation of the disturbed wetlands.

Mr. Gier stated NH DES will determine the relocation of any wetlands if needed, that impacts over 10,000 square feet through mitigation, likely in the form of payment as they have found that relocation does not work.

Vice Chair Allen noted that in choosing safety over wetlands impact, he would choose safety. Removing the Route 107 curve from the development is the best option. Mr. Gier offered to relocate the access on Route 107 closer to the bottom of the hill; however, the best option was determined to be removing the access from the Route 107 curve altogether.

Mr. Nigrello agreed with Vice Chair Allen stating the safety issue remains on CP13 and that CP14 removes this issue, but then creates a wetlands issue to which he has less objection to.

RPC Planner Healey stated her preference is the orientation in CP14. Noting that part of the subdivision goals for open space has a recreational component, she asked if the applicants would be amenable to a walking trail easement specifically between lots 5 and 6 so that people can access the conserved open space.

Mr. Gier stated they applicants would have no problem with that. At further inquiry, he stated the linear distance of wetlands impact for the proposed road is roughly 190 feet.

Chairman Bath concurred with the other board members that safety trumps wetland crossing and that he also likes the idea of a trail access to the open space.

Conservation Commission Chair/Town Engineer Quintal inquired about the wetlands between proposed lots 5 and 14 noting it could be a problem if this area is designated a vernal pool. Additionally, the Conservation Commission expressed a concern with the previous plan about the preservation of the wildlife habitat recommending any development of the property be minimized to preserve this wildlife corridor. CP14 does a better job at this.

Chairman Bath then opened the discussion to public comment.

Michael Jacques of 2 Tilton Lane spoke to creating a one-way traffic pattern, on concerns about the location of utilities access, on a maximum of seven houses on a one-way street, and on the length of the road. He questioned the locations of the water drainage areas and noted hunters access and use the property. With respect to the slope of the property, the open space recreation concept would not be suitable for those with mobility issues. He stated he has concerns with safety, as well as personal concerns about his property (mailbox, water access).

With no other comment from the public, Chairman Bath closed the public comment portion of the discussion reminding the applicants that this discussion is nonbinding. He stated he appreciates there being two options for discussion points and that the board has similar concerns as the public as well as similar concerns noted with the originally denied plan. He noted his preference is CP14.

Vice Chair Allen agreed and noted he would like to see design methods more environmentally responsible versus building up with rock and gravel, i.e. a series of culverts that keep the water running through the property.

Mr. Gier responded minimal impact is the goal and thus they will present a culvert system to provide the required connectivity.

There being no further discussion, Chairman Bath ended the design review phase for case #2023-13.

OTHER BUSINESS

APPROVAL OF MINUTES

Board members reviewed the minutes from November 16, 2023 meeting minutes and the November 18, 2023 site visit notes.

MOTION: Chairman Bath motioned to approve the November 16, 2023 meeting minutes and the November 18, 2023 site visit notes as published; seconded by Vice Chair Allen. The motion passed 3-0-0.

FINALIZE SITE VISIT REPORT

Board members review the draft site visit report for their site visit conducted on November 18, 2023 of the light industrial park located at 213 Haverhill Road.

Discussion ensued on the process for compliance (by way of individual tenants or the park owner), on the ultimate responsibility being that of the park owner, on the report providing documented evidence of violations for future town action, and on recommendations the Selectmen designate a team to address the matter.

MOTION: Chairman Bath motioned to accept the site visit report for 213 Haverhill Road; seconded by Mr. Nigrello. The motion passed 3-0-0.

ELDERLY HOUSING ORDINANCE

RPC Planner Healey provided an update on how the affordable/workforce housing statute applies to the development bonuses and incentives outlined in the elderly housing ordinance stating since the town has already adopted an affordable/workforce housing ordinance, the incentives in the elderly housing ordinance do not apply. Therefore, there is no immediate need to delete or amend the elderly housing ordinance at this time. The board may want to look at updates for the 2025 ballot.

ANNUAL REPORT

Board members were provided a copy of the draft annual report of the Planning Board for year ending 2023.

MOTION: Chairman Bath motioned to approve the annual report as written; seconded by Vice Chair Allen. The motion passed 3-0-0.

NEXT BOARD MEETING

The January 2024 meeting will be held at the Pound School. The February meeting will be held at the East Kingston Elementary School.

ADJOURNMENT

MOTION: Chairman Bath motioned to adjourn; seconded by Mr. Nigrello. The motion passed 3-0-0.

The meeting ended at 8:33pm.

Respectfully submitted,

Catherine Belcher, Land Board Secretary

Minutes approved January 18, 2024.