

TOWN OF EAST KINGSTON PLANNING BOARD

MEETING MINUTES

February 15, 2024

Pound School
41 Depot Road
East Kingston, New Hampshire

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

AGENDA

Erica Mullaney – 14 Powwow River Road Unit #2 (Case #2024-01) – Change in Tenancy

Jason LeMay – 213 Haverhill Road Unit #8A (Case #2024-02) – Change in Tenancy

Becky Mathews – 131 North Road Subdivision – MBL# 16-02-02 – Discussion

Board Members Present: Tim Allen – Vice Chair, Josh Bath - Chair, Robert Caron – Ex-Officio (filling in for Robert Nigrello), Ellie Cornoni and Janet Smith.

Others Present: Victoria Healey – RPC Planner, Dennis Quintal – Town Engineer/Conservation Commission Chair, Erica Mullaney, Jason LeMay, Becky Mathews, and other members of the public who did not participate in any discussions.

Chairman Bath opened the meeting at 7:00pm followed by the roll call.

ERICA MULLANEY – 14 POWWOW RIVER ROAD UNIT #2 (CASE #2024-01) – CHANGE OF TENANCY REQUEST

Chairman Bath opened discussion with Erica Mullaney at 7:01pm. He noted the applicant proposes to operate a business which provides esthetician and cosmetology services to the public. This property is located in a commercial district. He then invited Ms. Mullaney to present her proposal.

Ms. Mullaney began by reading a prepared statement that provided an overview of the nature of the business that included a list of the services provided (lash extensions, holistic facials, expert waxing, massage, and creative nail services), a description of the types of products that will be sold (handcrafted products from local vendors and artisans, i.e. jewelry, natural skin and body blends, crystals, and eco friendly items), all with an emphasis on providing a safe, warm, and inviting atmosphere. She stated she chose the business name, The Chameleon House, as it is representative of the many changes in her personal journey.

Chairman Bath then led in the review of the criteria for businesses located in a commercial district resulting in the following conclusions:

- There are no hazardous or toxic materials shall be stored onsite. MSDS sheets will be available by a binder kept in the shop and electronically.
- There are no odors detected beyond the property line.
- There are no noxious, toxic, or corrosive fumes generated by the business.
- There is no dust or smoke exhausted into the air.
- There is no heat or glare evident beyond the property line.
- There is no noise detected beyond the property line.
- There is no detectable radiation outside of the building.
- Trash receptacle is on site (back of building).
- No additional lighting is needed.

- The business requires a valid esthetics or cosmetology license with the State of NH. State inspections are also required.

BOARD QUESTIONS

Vice Chair Allen inquired about any chemicals or dyes that would be poured down the drain. Ms. Mullaney stated there would be no hair dyes as they are not a hair salon, although they would provide dreadlock and hair extension services. The most dangerous product on hand would be the acetone from the nail polish which would not be washed down the drain.

Responding to Chairman Bath, she stated the business signage will be on the property's main signage board and she will have a small metal cut out sign for display by side of her door which is required by the state. With respect to parking, the existing lot is generously sized. The only time it might get busy is when parents pick up their children at the daycare next door.

Mrs. Cornoni inquired as to how the linens used for the business would be cleaned. Ms. Mullaney indicated she uses an offsite linen service.

Vice Chair Allen asked about the total number of people that might be inside the unit at any given time, noting a restricted number of people for that particular septic system. Ms. Mullaney stated there could be as many as six to eight which would include three employees, each with a client and maybe one or two waiting.

Noting the hours of operation proposed, Chairman Bath recommended Ms. Mullaney request the maximum number of days and hours (Sunday-Saturday from 9am to 7pm) to allow her business the flexibility in setting business hours as needed to which she agreed.

MOTION: Chairman Bath motioned to approve the change in tenancy for Erica Mullaney to operate The Chameleon House at 14 Powwow River Road, Unit #2 as proposed and with the modification to the hours of operation; seconded by Vice Chair Allen. The motion passed 5-0-0.

JASON LEMAY – 213 HAVERHILL ROAD UNIT #8A (CASE #2024-02) – CHANGE OF TENANCY REQUEST

Chairman Bath opened discussion with Jason LeMay at 7:12pm, noting the applicant proposes to operate a hot tub delivery service (Newton Hot Tubs) to hot tub retailers. This property is located in the light industrial/residential district. He then invited Mr. LeMay to present his proposal.

Mr. LeMay began by stating he does not sell hot tubs; he only delivers them to customers for about a half a dozen retailers. The tubs come in on a big truck and leave on trailers. Half of the tubs are stored at the business until delivered to the customer.

Chairman Bath referenced a November 18th site visit to the property (213 Haverhill Road) where the site visit team observed a large stockpile of used/junk hot tubs that were stored to the side and rear of the building. He asked Mr. LeMay if this was typical to the operations of the business.

Mr. LeMay responded that November was the end of the busy season and that he was behind in disposing of them. Typically, he stockpiles up to nine, which his trailer can accommodate, and then brings them to a recycling center in Epping.

Chairman Bath stated that the Planning Board has taken great efforts to ensure the light industrial park is well maintained, clean, and free of debris and trash. The site visit team was dismayed when they saw all the hot tubs around the building. Businesses located within the light industrial park are supposed to operate their businesses from inside the buildings; not have stockpiles of materials outside. He asked if there was any way Mr. LeMay could store the hot tubs, both new and used, inside the building.

Mr. LeMay responded he does not have space nor the ability to do so as the building is not big enough nor is there a loading dock. He pays by the ton to dispose of the junk tubs thus he needs to stockpile them in order to economize on the disposal cost. He asked if storing them behind the building would be acceptable as then no one would be able to see them.

Chairman Bath entertained the idea of allowing a stockpile of up to nine tubs with the understanding those nine tubs would be removed before more are stockpiled. He noted the board would need to weigh in on this idea as well. He then asked why Mr. LeMay is responsible for taking away old hot tubs as part of his delivery service.

Mr. LeMay stated the hauling away of used tubs is also provided as part of his business and that 5%-10% of new hot tub deliveries require the removal of an old one.

Chairman Bath responded the town should not serve as the receptacle for the old hot tubs.

Mr. LeMay stated the tubs are only stored for a month or so. He could keep the tubs out in back of the building; however, he does not want to limit the number to only nine tubs; maybe the board would consider a larger number.

Chairman Bath then led in the review of the business as follows:

- The business consists of one employee plus the owner.
- There are no regular hours; however, they typically operate from 9am to the evening, by appointment.
- The business equipment includes two trucks, two trailers, and two forklifts.

Chairman Bath asked in any of these vehicles and equipment could be parked inside the building. Mr. LeMay responded that one truck and trailer go home with him each night, the remaining trailer stays outside, and both forklifts are able to be stored inside although one is outside as it is need of repair.

- Two 30-pound propane tanks are stored inside the building.
- Fire alarm and fire extinguisher serve as the fire detection and fire suppression plan.

Chairman Bath then led in the review of the criteria for businesses located in the light industrial district and noted:

- There are no odors detected beyond the property line.
- There are no noxious, toxic, or corrosive fumes generated by the business.
- There is no dust or smoke exhausted into the air.
- There is no heat or glare evident beyond the property line.
- There is no noise detected beyond the property line.
- There is no detectable radiation outside of the building.
- Trash disposal by onsite dumpster; hot tubs brought to transfer station in Epping.
- No additional lighting is needed.

BOARD QUESTIONS

Vice Chairman Allen inquired on the number of junk hot tubs currently onsite. He noted he had hoped to have visited the site earlier in the day but was not able to.

Mr. LeMay responded there were approximately 15 junk hot tubs on the property. This includes some that are on the trailer for transport to Epping.

Vice Chairman stated that when the site walk was conducted, there was evidence of a number of junk hot tubs, some partially falling apart. Storing them beside, or behind the building is irrelevant to the position that business materials

be stored inside. He asked how difficult it would be to store them inside the building, or to place them inside of an enclosed trailer.

Mr. LeMay answered that the tubs are placed on an open trailer as when they are delivered to the transfer station, an excavator with a large claw removes them from the trailer. This cannot be done with an enclosed trailer. Additionally, he would need a loading dock to get the tubs in and out of the trailer, which the building does not have.

Chairman Allen stated it is clear the business has been in operation for a while and asked why Mr. LeMay is only coming to the board for permission now.

Mr. LeMay responded that Paul Masone told him what he needed to do when he first got here. He went to the town hall and got the form but since he didn't have all the information needed at the time, he couldn't submit the form right away. It ended up on the dashboard of his truck and he just blew it off. He has been to five other towns and has never been asked to do this (apply for town approval) so he thought it was no big deal. This was also at the end of covid when it was absolutely crazy.

Chairman Bath asked if there were any issues with the other towns where Mr. LeMay has had to leave them and come to East Kingston.

Mr. LeMay stated there were no issues. He started out in Brentwood where there were only 1500 square foot units and no outside storage allowed, so that didn't work out. He was at Puzzle Lane in Newton utilizing two buildings, but the owner of the site was a terrible person, so he left there. He went to a place in Seabrook and then Hampton Falls. As the business grew he needed to keep moving until he came to East Kingston. The building is not huge, but the site can accommodate the business.

Mrs. Cornoni stated her concern was with the degree of trash and small pieces of hot tub materials that get blown into the woods, the wetlands, and surrounding area. She would be in favor of a disposal schedule or some way to contain the debris.

Vice Chairman Allen stated he would not be comfortable with a business that stockpiles debris outside especially after all the effort the board has undertaken to get the property cleaned up. One solution would be for Mr. LeMay to purchase a roll-off trailer where the tubs are stored before they are transported to Epping. There needs to be an alternative to piling them up and them falling apart in the open air.

He went on to opine that he does not believe the board should be approving any new business in the light industrial park until the site has been determined to be in compliance. He stated this tenancy decision be put on hold until compliance has been determined.

Mr. Caron stated he agreed with Vice Chairman Allen and further stated that there needs to be some level of control with respect to the used hot tubs that are picked up and brought back to the site. When he visited the site in November, there had to be 15 junk tubs stacked up beside and behind the building.

Vice Chairman Allen stated there are 15 tubs there still; the town has been battling the clean up and compliance issues with this property for years. It would be irresponsible of the board to continue to allow this type of stockpiling. There are solutions whereby Mr. LeMay could rent a bigger unit, purchase a new trailer and build a ramp where his forklift could maneuver. There needs to be an alternative to the units being stacked outside and falling over to further deteriorate on the property. Especially since the facility has been an issue for the board for decades.

Mr. LeMay stated he was not aware of the issues associated with the property and the town. He stated he has been in the business for 15 years and that other businesses in the industry leave their hot tubs outside. He admitted that he could have stacked the used units more neatly, but that it was a crazy summer and he was short-staffed. He understands the board's reasoning, but outside storage is how it works for his type of business. It is cost-prohibitive to store junk hot tubs inside.

Responding to Mr. Caron's suggestion to limit the number of units stored outside and make weekly trips to the transfer station, Mr. LeMay stated he could agree to keep to a certain number outside, but it would be impossible for him to store the units inside. He stated there would be too much work and not enough gain.

Chairman Bath responded the gain would be the Planning Board's approval. The property has been a thorn in the Town's side since he has been a member (over 10 years), and they have had real issues getting the property to the condition it is in now; even though the condition at present is still not acceptable.

Town Engineer/Conservation Commission Chair Quintal opined that he understands what is trying to be accomplished in cleaning up the site. He asked what message is being sent to the other business owners in the park, whether it be one junk tub left outside or 10. The requirement is for all the businesses is maintain a clean site around their businesses. Allowing the stockpiling of junk hot tubs is counter to this requirement.

Mrs. Cornoni suggested Mr. LeMay dispose of old hot tubs immediately upon removing them from customer homes versus stockpiling them.

Mr. LeMay stated the disposal costs are rated by the tonnage. It would increase the disposal fee from \$75 per tub to \$200. It takes two to three tubs to get to the minimum one-ton requirement. He would then need to push that cost onto the retailer and customer.

Responding to Planner Healey, Mr. LeMay stated he can deliver up to nine old hot tubs on his trailer for disposal to Epping and that he maximizes the load for each trip.

Chairman Bath stated that given the ongoing problems on the site, he would not approve this business unless the applicant can come back with a solution to address the storage of the junk hot tubs, whether it be they are stored inside the building, in an enclosed trailer, immediately disposed of upon removal from the customer's home or another option. There cannot be a stockpile of used hot tubs in the open air. This applies to everyone in the park. Automotive businesses are required to store their vehicles inside, steel companies are required to store their materials inside, unless there is a piece of steel or material that cannot fit inside the building. Everything else needs to be stored inside.

Vice Chairman Allen stated the facility is to be kept neat and orderly with everything stored inside the buildings. There are exceptions like a large piece of steel, but by no means does the site plan allow for the outside storage of the junk hot tubs, which is essentially trash going to a recycling center. The board could never approve of this type of storage. Storing them in enclosed trailers would likely be permissible; however, the stacking of trash outside is not something the board would ever agree to.

Chairman Bath suggested storing up to three to four junk tubs inside the building and when they get to four, trailer them up to the recycling center. This way they are not being stored outside. The board does not want to exacerbate an already bad situation.

Mr. LeMay asked if he could store his new, neatly wrapped hot tubs outside or behind the building to which Chairman Bath replied nothing is supposed to be stored outside of the building. Mr. LeMay stated that when he rented the property, he was told he could store the units outside using the whole back area behind the building.

Chairman Bath stated this is not the case and that property owner Masone has been through this process time and time again. What he says and what is happening are not always the same. Had Mr. LeMay come in early on, before he began operating out of 213 Haverhill Road, he would not be in the predicament he is in today. Learning up front that the storage of materials outside the building was not acceptable, he (Mr. LeMay), would not be faced with this problem.

Chairman Bath recommended Mr. LeMay think about the situation he is in, the possible remedies, and come back to the board next month with a solution that the board can consider. He will be placed on the March 21st agenda. The Land Board Secretary will contact him with more details. Mr. LeMay agreed.

Chairman Bath opened discussion with Becky Mathews at 7:37pm noting this conceptual consultation phase (RSA 674:4 II (a)) will allow the applicant to discuss with the Board, in very general terms, layout and yield potential for the property and receive instruction on the subdivision application process. This will be a nonbinding discussion.

Ms. Mathews stated she currently has a sales pending agreement with the property owners of 131 North Road and prior to finalizing the purchase, Dan Turco (property owner) has given her permission to obtain subdivision approval for which she is seeking to subdivide the property into four lots. She wants to be sure that the layout she is proposing is something the board would approve of as she would require a waiver as well as some changes to the existing property. Moving forward with her plan would require there to be a boundary line up through the portion of the property where a barn is located (the barn would be removed), and the two-family home would need to be converted back to a single family. The waiver would be for the lot width provision. She stated she researched the tax maps of the town and noticed there are several sharp-angled lots. Additionally, she would be utilizing the backlot provision.

Chairman Bath noted the contour of the property reflects very steep grades to which Ms. Mathews responded she has already had the property surveyed and the land behind the existing house, down passed the gas line is very steep; but the remaining front portion of the parcel is useable. The front portion of the property meets the slope requirements. The remaining backland will remain open space and be used for four-wheeling and recreation.

Discussion ensued on the backlot provision noting that the original parcel was created prior to 1996 thus it qualifies for a single backlot. Since the subdivision is located within 1,000 feet of the centerline of the gas transmission lines, the utility company will need to be notified – this would be the responsibility of the applicant. Proof of the notification would be required as part of the application process.

It was at this time that the 8 1/2x11 topography map the board was reviewing was the incorrect version as two different versions were submitted as part of the conceptual consultation. The corrected version was then shared with the board.

Ms. Mathews noted the parcel and four lots contain enough uplands to accommodate wells, septic systems, and homes. The waiver request would apply to the rectangular shape on one of the lots which cannot be avoided due to the angle of the existing boundary line.

Discussion ensued on the driveway permits needed for the proposal noting the DOT imposes limitations on the number of driveway cuts it allows for a subdivision. There may also be waivers required in this area as, depending on the DOT, there may need to be some shared driveways.

Ms. Mathews stated the renovations to the house would be to convert the two-family into a single family because the loss of road frontage would disqualify the house from being a duplex (300 ft of road frontage is required and the new configuration would reduce it to 200 ft). Additionally, the duplex area is 1,200 square feet where only 900 is allowed under the ADU provisions. Board members informed Ms. Mathews that the ADU square footage may be increasing to 1,200 square feet as of March 13th as this zoning amendment is on the ballot. This means that the duplex might qualify as an ADU. The process for determining this, and receiving ADU approval, is through the Zoning Board of Adjustment. The Land Board Secretary can assist her with that process.

Discussion then ensued on fire protection provisions, the location of a dry hydrant at Autumn Lane, the potential for a fire pond on the property, and installing fire sprinklers in the new homes. Ms. Mathews will contact the Fire Department for more information about this as part of her application. She also intends to submit her application in time for the March meeting.

She will have her engineers address stormwater management and will put the waiver requests in writing in a fashion that meets the criteria for granting waivers. She indicated she is a land developer by trade and is excited to be able to purchase the property and reside in the main house. She thanked the board for their time.

BOARD BUSINESS

APPROVAL OF MINUTES

Board members reviewed the January 18, 2024 meeting minutes.

MOTION: Chairman Bath motioned to approve the January 18, 2024 meeting minutes as published; seconded by Mrs. Cornoni. The motion passed 5-0-0.

ANNUAL CALENDAR – GOAL #1

Board members reviewed the annual calendar which depicts the annual work of the board (i.e. election of officers, zoning amendment development, Growth Management review, Rules of Procedure review, Land Board Fees review, etc.).

Chairman Bath stated he would like the board to look at the Light Industrial/Residential District zoning language for possible amendments for the 2025 ballot. This as well as other items (Home Occupation, Building Inspector and Permits, commercial vehicle weight, and any other suggestions that arise throughout the year) are slated for further discussion as part of the annual zoning amendment process.

The March meeting agenda will include election of officers, review of the Rules of Procedure and Land Board Fees. Board members were advised to review those documents in advance of the meeting to determine if any changes are warranted.

HOP GRANT UPDATE – GOAL #4

RPC Planner Healey provided an overview of the HOP Grant status noting the work is back on task with the recent approval from the State to allow the remaining HOP Grant funds to be expended to complete work which began in April 2023. The RPC has been tasked with picking up where the former planner left off pending the signing of the contract which will be executed momentarily. She went on to say examples of the work from other towns shall serve as the model of the work as they (RPC) will be working on a reduced budget, and they will recycle as much of the work that has already been done. She presented three tasks and their descriptions (1. Analysis of Needs Assessment Reports and Data, 2. Regulatory Audit, and 3. Community Engagement) noting that task number one will also inform the board in updating the Housing Chapter of the Master Plan, task number two will provide information to identify opportunities to make modifications to the regulations as well as assist the town with meeting its housing needs and goals, and task number three will gather feedback from town officials, staff, and volunteers on housing needs by way of survey. Both the Housing Needs Assessment and the Regulatory Audit will be presented at a regular or special board meeting in a manner that would allow the presentations to be posted to the RPC's YouTube Channel and the Planning Board's website.

Chairman Bath commended the cooperation of the state, the RPC, and the Selectmen in getting this important housing assessment project back on track.

MASTER PLAN UPDATE – GOAL #2.C

RPC Planner Healey stated the Housing Chapter of the Master Plan will be addressed with the Housing Needs Assessment work. The next two chapters in need of update are Land Use and Vision. She then presented a cost estimate for completing this work.

Task 1: Community Engagement Survey (\$2,500) for drafting a public survey to obtain resident input for use in Vision Chapter and Land Use Chapter update, post survey, and provide report regarding survey results.

Task 2: Community Engagement: Public information Session/Workshop (\$1,800) for developing one outreach event to allow opportunity for the public to review and provide input on the draft land use chapter, including draft goals and actions. The format of this event will be coordinated with the Planning Board.

Task 3: Land Use Master Plan Chapter (\$4,000) for the creation of the Land Use Master Plan chapter draft including development of background data, incorporation of public outreach from task 1 and task 2 and development of Master Plan goals. Optional: creation of GIS map to feature within the chapter.

Task 4: Vision Master Plan Chapter (\$1,000) for the creation of the Vision Master Plan chapter draft incorporation of public outreach from task 1 and task 2 and development of Master Plan goals.

Task 5: Final Chapter Adoptions (\$700) to provide final draft of the Land Use and Vision chapter for public hearing for adoption.

Board members discussed funding options (directly from the Planning Board budget, and possibly using some ZBA budget moneys), on keeping the Master Plan a standing item on the agenda for tracking purposes and moving ahead with the full engagement of the board versus establishing a Master Plan committee.

PB CASE #2023-11 UPDATE

The board was updated on the withdrawal of the mulch manufacturing proposal with respect to technical review fees, the temporary bridge over the gas transmission line, the Bowley Road road bond, future land development of the property, and the wetlands matter:

- All review fees have been paid to date.
- The temporary airbridge is to be removed. This falls under the authority and jurisdiction of Unitil. Once the bridge has been removed, the gas line crossing is to be returned to its original state including the removal of the gravel road in the proximity of the pipeline.
- The release of the \$11k road bond will be addressed by the Selectmen.
- Future development of the property will require a permanent crossing as determined by Unitil.

With respect to the wetlands, Town Engineer/Conservation Chairman Quintal stated there were concerns about wetlands encroachment along the newly constructed roadway. When wetland scientists set flags, those flags are not placed precisely at the edge of the wetland, but in close proximity. This particular development cut the road right up to the end of the flag. He suggests letting the vegetation grow back to buffer the wetlands. He said that neighbors have recently reported the property owners have cut all the way back to the river. With the withdrawal of the application, the town has no real leverage to address this.

Discussion ensued on both 9 and 7 Bowley Road utilizing the airbridge to cross the pipeline and that those two property owners will need to address how the pipeline is crossed. It was noted that the road bond moneys can only be used for Bowley Road repairs and not for wetlands reclamation.

TRANSPORTATION ADVISORY COMMITTEE (TAC) REPRESENTATIVE

The board was advised of a vacancy for town representation on the RPC's TAC. The purpose for the committee is to provide technical advice and recommendations for the Rockingham Metropolitan Planning Organization (MPO) concerning transportation issues that have a bearing on the region. TAC meetings are held on the fourth Thursday of the month at noontime at the RPC in Exeter. The representative can be a Planning Board member, another town official or a resident at large with a special interest in transportation. Due to work schedules, there were no board members able to fill the position. Vice Chairman Allen requested the members of the ZBA be asked first before the invitation is extended to other town officials.

GROWTH MANAGEMENT ORDINANCE

Discussion ensued on the status of the Growth Management review which was last conducted in December 2022 and the need to update stats and tables for inclusion in the 2024 edition of the Zoning Ordinance. With the assistance of

Planner Healey and the RPC's data on regional and surrounding growth, the board will update the data and stats, hold a review of that data at the March meeting followed by a public hearing in April where the board will make an official determination on whether or not to retain the ordinance in 2024.

CAPITAL IMPROVEMENTS PLAN (CIP)

Discussion ensued on the lapse of the CIP (2017-2022) and the need to get it updated as it serves as a foundational document to the Growth Management Ordinance. The board directed the CIP worksheet be disseminated to appropriate department heads so that capital improvements can be included in the plan.

REGIONAL DEVELOPMENT – TOWN OF KINGSTON ZONING BOARD OF ADJUSTMENT

The board is in receipt of a ZBA public hearing notice from the Town of Kingston regarding variance requests for building heights and structure regulations and definition of multi-family dwellings for Liberty Commons, LLC who proposes to develop a residential mixed-style community development consisting of duplexes and garden style apartments with a combined total of 255 bedrooms on properties located along Route 125 and 50 Depot Road. The access point for this development would be on Depot Road (Route 107). The hearing is scheduled for March 14, 2024 at 7pm at the Kingston Town Hall. Immediate concerns voiced by members were the location of an aquifer in the Town of East Kingston and the traffic impact to Route 107 through town. These concerns will need to be communicated to the Town of Kingston and the RPC as they will be holding the regional impact hearing.

NEXT AGENDA

The March 21st meeting agenda shall include:

- Election of Officers
- Review of Board Documents
- Stormwater Management Updates
- CIP Update
- Master Plan Update
- Growth Management Review

ADJOURNMENT

MOTION: Mrs. Cornoni motioned to adjourn; seconded by Vice Chair Allen. The motion passed 5-0-0.

The meeting ended at 9:16pm.

Respectfully submitted,

Catherine Belcher, Land Board Secretary

Minutes approved March 21, 2024.