

TOWN OF EAST KINGSTON PLANNING BOARD

MEETING MINUTES

October 20, 2022

Pound School
41 Depot Road
East Kingston, New Hampshire

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

AGENDA

- Reynolds Home Occupation Application – 6 Sullivan Drive – Public Hearing
- HB 1661 Follow Up
- Elderly Housing Ordinance
- Rules of Procedure
- Site Plan Review/Subdivision Regs Posting Requirements
- NH Housing Opportunity Grants
- Addyson Lane Bond Release
- March Town Meeting Calendar and Zoning Amendments

Board Members present: Josh Bath – Chair, Tim Allen – Vice Chair, and Rob Caron – Ex-Officio. Absent: Dr. Robert Marston and Janet Smith.

Others Present: Julie LaBranche – Planning Consultant and Dennis Quintal – Town Engineer.

Applicants and members of the public who participated in the meeting: Keith Reynolds and Richard Leith.

Chairman Bath opened the October 20, 2022 Planning Board meeting at 7:00pm followed by the roll call.

REYNOLDS HOME OCCUPATION APPLICATION – 6 SULLIVAN DRIVE – PUBLIC HEARING

Chairman Bath opened the public hearing for Keith Reynolds to operate a landscaping/agricultural business, as provided under East Kingston Zoning Ordinance Article XVI Home Occupations, in a residential zone at property located at 6 Sullivan Drive Road, (MBL# 11-2-28). The applicant proposes to operate K&B Lawn Maintenance and Snow Removal from the premises.

Mr. Reynolds indicated he operates a family-owned landscaping business in which work is conducted off site; there are no customers coming to the premises, no signage, no business deliveries, no storage, and only three employees (two who drive to the premises to report to work and one (his son) who resides with him at the home. He stated his home is set back 1,000 feet from the road and he is respectful of his neighbors. No employees come to home in the winter for the snow plowing portion of the business as they plow with their own vehicles. Due to the high volume of business he does with Landscaper's Depot in Kingston, he has access to the free dumping of his landscaping debris. He owns and stores two trucks and two trailers at the premises. Hours of operations are 7am to 3pm, Monday through Friday.

Chairman Bath read aloud an email from abutter Sandy Hughes of 2 Sullivan Drive who indicated her support of the business operations. He then turned the discussion to the business vehicles as noted on the application – a 2019 Ford 250 (GVWR 12,000), a 2016 Ford F550 (GVWR 17,500), and two 16-foot trailers and inquired if these vehicles were going to be stored at the premises. Mr. Reynold responded affirmatively to which Chairman Bath cited Article III-B Residential/Agricultural District which states in part:

The intent of this district is to provide areas for single-family dwellings and agriculture in a traditional small-town rural setting separate from industrial, commercial and business operations. The district shall maintain strict adherence to residential and agricultural uses except as otherwise permitted by the East Kingston Zoning Ordinance. All development shall be carried out with the objective of preserving the natural and scenic environment of this rural district.

1. *The parking of not more than one commercial vehicle of 14,000 GVWR or less is permitted and shall not have the appearance of business operations from the property. Agricultural vehicles and equipment are excluded from this requirement.*

He continued to state that the Ford F550 does not comply with this provision and would need to be stored offsite for the board to consider recommending the home occupation to the Selectboard. Mr. Reynolds indicated he has access to some commercial sites that he maintains where he could store the truck, and that he was also considering replacing it with something smaller. At his question as to the rationale for the GVWR restriction, it was explained the town voted on this in 2020 as a means to preserve the residential and agricultural character of the town. Vice Chair Allen noted that most trucks in the 17,000 GVWR category qualify as dual-wheel large trucks that are not conducive to the residential character. The 17,000 figure was presented to the voter because anything smaller might have been too restrictive.

Mr. Reynolds stated that he would commit to getting a smaller truck or parking the F550 offsite in order to get his home occupation approved.

FINDING OF FACT

Chairman Bath then reviewed the home occupation checklist and asked Mr. Reynolds to respond to each of the criteria.

- The home occupation qualifies as a visible business. Although the only portion of the business to be conducted onsite was the business office, the presence of the business vehicles and trailers with the business logos give the presence of a business. This, combined with the vehicle traffic of employees twice a day, would constitute a larger footprint of business operations. Mr. Reynolds noted his home was set back from the street 1,000 feet and was not visible to the neighbors or street. It was explained that the location of his home on the property does not relieve him from the provisions of the ordinance.
- The Home Occupation must be located within a dwelling unit, or in a building or structure accessory to a dwelling unit. – *Business office to be located in main dwelling (450-foot office) at 6 Sullivan Drive. - MET*
- The exterior of the building must not create or display any evidence of the home occupation, except a permitted sign and parking for customers and delivery vehicles. Variation from the residential character is prohibited. – *The applicant is not proposing a sign nor any customer to and from the premises - MET.*
- Adequate off-street parking must be provided for customers and deliveries. All businesses must provide adequate turnaround, drop-off, and pick-up areas in order to prevent cars from waiting in the street right-of-way and to prevent cars from backing up into the public right-of-way. The Home Occupation shall not require regular need for delivery of materials to and from the premises by commercial vehicles over twelve-thousand (12,000) pounds GVWR (e.g., tractor trailers and heavy commercial vehicles). – *Work is completed off site with ample parking for employees on the 1,000-foot driveway. - MET*
- The Home Occupation must be conducted by a resident or owner of the property. – *Business is owned and operated by Mr. Reynolds who resides at the premises. - MET*
- The home occupation must not offend by emitting smoke, dust, odor, noise, gas, fumes, lights, or refuse matter. – *Business office with landscaping and snow removal operations conducted offsite. - MET*
- Home occupation must not cause excessive vibrations, store or handle combustible or explosive materials, or negatively impact the physical condition, safety, access or traffic volume of existing roads. – *Business office with landscaping and snow removal operations conducted offsite. - MET*
- The Home Occupation must not utilize more than 50% of the gross floor area including dwelling, basement and accessory structures as the property is located on a State road. – *The office will measure approximately 450 square feet; the house in total measures 4,500 square feet, thus only 10% of the home will be utilized for the business office.*

- Not more than four non-residents (of the premises) may be employed by the Home Occupation. For the purposes of this section, the Planning Board shall determine whether sales or other personnel, who conduct the majority of their business away from the property, shall be included in the count of those employed at the premises. – *Mr. Reynolds employs three other individuals; one who lives at the premises (son) and two who live offsite.*
- Disposal of all solid waste generated by the business must be at the business owner's expense, and shall not be provided by the Town of East Kingston. – *No dumpster is needed as the business refuse/debris is dumped offsite (Landscaper's Depot).*
- The exceptions for businesses located on a state road do not apply to this application.
- The home occupation is considered a permitted use that is similar in nature, scale and impact to other permitted uses listed in the zoning ordinance.
- No signage is proposed.

Chairman Bath asked for board comment and questions; there were none. He then opened the meeting to public/abutter comment. Richard Leith of 13 Ashlie Road spoke to his support of the business and noted he cannot see or hear anything coming from Mr. Reynolds' property. He also spoke to Mr. Reynolds' generosity in mowing his lawn for free when he (Leith) broke his back.

Planning Consultant LaBranche inquired of the driveway and road connection surface. Mr. Reynolds responded his driveway is paved all the way down the roadway, partially by him and partially by the town.

MOTION: Chairman Bath motioned to recommend the Board of Selectmen approve the Home Occupation application of Keith Reynolds, MBL# 11-02-38 for a visible home occupation to operate a landscaping business (K&B Lawn Maintenance & Snow Removal) at 6 Sullivan Drive based on the scope of the business as presented on the application with the condition that two trucks and two trailers weighing no more than 14,000 GVWR each may be stored on the property; seconded by Vice Chairman Allen. With no further discussion the motioned passed 3-0-0.

The applicant was informed of the process for Selectmen approval of the application, the annual permitting process, and that any changes to the scope of the business office would require Planning Board review and Selectmen approval. It was also noted that there may be an option to park/store the F550 in the neighboring light industrial park. Chairman Bath closed the public hearing at 7:23pm.

HB 1661 DISCUSSION

Planning Consultant LaBranche provided a written memo on planning board procedures on decisions as it relates to the passing of House Bill 1661 whereby the land use board would now be required to generate findings of fact for each decision made on formal applications. She spoke to the decision phase where the board chair shall close the public hearing, following the receipt of testimony and submission of information by the applicants as well as comments from the public, and instruct the board to summarize findings of fact. She noted the importance of implementing this process after each public hearing in cases of continued public hearings for tracking purposes.

She then spoke to the finding of fact process whereby the Planning Board shall rely on minutes, notes and comments from Board members, public comments, and the application plans and other materials to establish and frame the facts presented in the case. The board would clearly identify how the application does or does not meet the town's zoning requirements and land development regulations and verify that all application submittal requirements have been met (e.g. via a checklist or other method of documentation).

Such findings may include but are not limited to:

- specific site conditions that may impact or limit use of the property;
- the nature and scope of the proposed development;
- compliance with federal, state and local regulatory requirements;

- public health and safety issues and impacts to neighboring properties and the town;
- physical and environmental conditions present on the development site that may require special consideration or pose limits on the proposed site development; and
- environmental impacts resulting from the proposed development.

She then spoke to the conditions of approval or disapproval of an application whereby in the Decision of Approval: The Planning Board may develop Conditions of Approval for an application based on the facts and circumstances established during the Findings of Fact discussion including compliance with federal, state and local requirements and any issues identified during the Findings of Fact discussion that require follow up actions such as site inspections, regulatory review, legal review, payment of fees and any other action to finalize the application approval.

For the Decision of Denial: The Planning Board may develop a decision of denial on an application based on the facts and circumstances established during the Findings of Fact discussion. Facts relied upon for a denial shall be clearly stated and firmly anchored in how the application does not meet the town's standards and requirements and any other extraneous noncompliance issue(s) involving other permitting requirements.

Planner LaBranche gave examples of prior subdivision applications and how findings of fact were made throughout the review process – tracking the findings is an essential process moving forward and should be recorded in the meeting minutes.

Discussion ensued on the importance to slow down the review and approval process to ensure findings of facts are adequately determined and recorded, that the terms justifying a decision are clear (the board already does this), and that this new procedure is important should applications end up in court.

ELDERLY HOUSING ORDINANCE

Planning Consultant LaBranche provided a recap of the Elderly Housing discussion from the last meeting as it relates to applying development incentives to workforce housing developments.

- Currently Zoning Article XII Elderly Housing has achieved the maximum/exceeded the number of elderly/age restricted dwelling units as specified by the ordinance as documented by the Growth Management Ordinance. Zoning Ordinance XIII, Table section B.3. which states "The total number of elderly housing units shall not exceed 4% of the total number of standard residential dwelling units then existing in the town." Possible actions to retain Article XII and expand its use is to either raise the percent maximum of elderly housing units permitted or remove the percent restriction altogether.
- Since this ordinance cannot be executed at this time, has not been executed in over 12 years, and likely not be executed well into the future given the small number of new housing units constructed each year (<10). The Planning Board may consider action to repeal/remove the Zoning Article XII Elderly Housing altogether.
- As currently adopted, the development standards and criteria in Article XII Elderly Housing do not lend themselves to facilitating workforce housing and not a good fit for ensuring such developments fit into the fabric of this rural community. Obtaining grant funding to explore a new or revised ordinance might be helpful.
- Zoning Article XII Elderly Housing is very outdated and needs a thorough overhaul which is unlikely for the 2023 town meeting cycle and a rewrite would be more feasible for the 2024 town meeting cycle; however critical data is needed in order to prepare an update or complete rewrite of the ordinance.

She stated the ordinance is outdated, poorly organized, and needs an overhaul which cannot be done between now and January. The ordinance hasn't been used in years and the maximum amount of units has been exhausted. The board can 1) leave the ordinance on the books and work on it next year, 2) delete it altogether, or 3) raise the percentage or eliminate the percentage.

Discussion ensued on leaving the ordinance on the books and drafting a workforce housing ordinance, doing nothing at all at this time, on the state's new law that says the incentives for elderly housing developments would apply to

workforce housing developments, and removing the ordinance altogether; therefore grandfathering the existing developments. It was noted that per legal counsel, a lack of provision in the zoning ordinance essentially prohibits the development of the provision in question. Cluster development, duplexes, and the Conservation Subdivision Development Ordinance were noted as options for developing workforce housing. Planner LaBranche will provide more information on this topic (risk of doing nothing and workforce housing ordinance models) for continued discussion at the November meeting.

RULES OF PROCEDURE

The board reviewed the proposed revisions to the Rules of Procedure. Additional changes will include changing Chairperson to Chair, changing Board of Selectmen to Selectboard, modifying section 9.0 with respect to the meeting length and timeframes to be determined at the discretion of the chair, wordsmithing section 13.7, and verifying some of the RSA references.

MOTION: Chairman Bath motioned to advance the Rules of Procedure as amended for official adoption at the November 17th meeting; seconded by Vice Chairman Allen. With no further discussion the motioned passed 3-0-0.

SITE PLAN REVIEW/SUBDIVISION REGS POSTING REQUIREMENTS

The board reviewed proposed changes to the site plan and subdivision regulations regarding posting requirements for public hearings, specifically that instead of publishing the notice of public hearing in the newspaper, it would be posted to the town's website as permitted under RSA 676:4. Also noted were changes that should be made to the test pit paragraph with respect to witnessing and the submission of the report of the results of the test pit that would align the regulations with current practice.

MOTION: Chairman Bath motioned to forward the proposed changes to the Subdivision Regulations and Site Plan Review Regulations to public hearing at the November 17th meeting; seconded by Vice Chairman Allen. With no further discussion the motioned passed 3-0-0.

DISCUSSION ON INVEST NH HOUSING OPPORTUNITY GRANTS

Chairman Bath spoke to the board's possible hasty decision to seek an outside consultant for services on the housing grants. He noted Planning Consultant LaBranche is a qualified consultant listed on the grant application and would complete the grant application pro bono.

Discussion ensued on the timing of the grants, the expected deliverables for the needs assessment portion (the fair share determination, statistics and demographics) and the work necessary to aggregate this data. Also discussed was the possibility of contracting two consultants for the purpose of bringing in a fresh set of eyes and to assist Planning Consultant LaBranche. Planning Consultant LaBranche spoke to the logistical difficulties bringing in a second consultant and stated she would not apply for the grants (on behalf of the board) unless she was named consultant to the work. She noted the need to create a community profile via community survey as well as the need for more board discussion. The second grant (1 of 3) could apply towards the rewriting of the elderly housing ordinance. At the request of the board, Planning Consultant LaBranche will provide a bulletized list of ideas for grants number 2 and 3 for the November board meeting.

MEETING MINUTES

The board reviewed the September 15, 2022 meeting minutes and noted corrections.

MOTION: Chairman Bath motioned to approve the September 15, 2022 meeting minutes as corrected. Vice Chairman Allen seconded. The motioned passed 3-0-0.

ADDYSON LANE BOND RELEASE

Board members were in receipt of a written request from Dennis Quintal regarding the recent inspection report of Addyson Lane as conducted by acting town engineer Christian Smith of Beals Associates and the release of bond

moneys for that road. Mr. Quintal then read aloud the inspection report dated October 13, 2022 confirming Mr. Smith's recommendation to reduce or release bond moneys associated with the road (copies to be forwarded to board members).

MOTION: Chairman Bath motioned to release the bond moneys associated with the construction of Addyson Lane to Dennis Quintal based on the acting town engineer's inspection report. Vice Chairman Allen seconded. The motioned passed 3-0-0.

MARCH TOWN MEETING CALENDAR AND ZONING AMENDMENTS

Board members reviewed the legal calendar outlining the deadlines for public hearings on zoning amendments as it relates to the town warrant and March town meeting as well as a punch list of possible amendments to the zoning ordinance (clarification to septic design requirements for Accessory Dwelling Units, recording fees designation for ADUs cases, home occupation changes to public notice publication, removal of invisible home occupation application reference, elderly housing). Items to be reviewed at November meeting with a public hearing date of December 15, 2022:

ADU: Septic design requirements – Vice Chair Allen and Planning Consultant LaBranche to draft language to address clarification to the single or combined septic design requirement.

ADU: Recording fees to be added to the application (no public hearing required).

HO: Invisible application reference and posting requirements draft language to be provided.

The board will also review the Growth Control Ordinance as part of its annual review.

NEXT MEETING'S AGENDA

Public hearing on Site Plan Review and Subdivision regulations posting requirements, adoption of Rules of Procedure, Growth Control Ordinance review, continued discussion on NH Housing Grants, the Elderly Housing Ordinance, Workforce Housing models, and proposed zoning amendments.

With no other business before the board,

MOTION: Chairman Bath motioned to adjourn the meeting; seconded by Vice Chair Allen. The motion passed 3-0-0.

The meeting adjourned at 9:15pm.

Respectfully submitted,

Catherine Belcher

Land Board Secretary

Minutes approved on November 17, 2022.